

15424 ALSO IN  
VOL 3120

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United States  
Court of Appeals  
for the Ninth Circuit

VOL 3121

FOX WEST COAST THEATRES CORPORA-  
TION, TWENTIETH CENTURY-FOX  
FILM CORPORATION and LOEW'S, IN-  
CORPORATED, Appellants,

vs.

PARADISE THEATRE BUILDING CORPORA-  
TION, Appellee.

PARADISE THEATRE BUILDING CORPORA-  
TION, Appellant,

vs.

FOX WEST COAST THEATRES CORPORA-  
TION, TWENTIETH CENTURY-FOX  
FILM CORPORATION and LOEW'S, IN-  
CORPORATED, Appellees.

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**Transcript of Record**

In Six Volumes  
VOLUME IV.

(Pages 1425 to 1904, inclusive)

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Appeals from the United States District Court for the  
Southern District of California,  
Central Division

**FILED**

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No. 15424

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(Testimony of Alex Schreiber.)

Mr. Corinblit: We will come to that in a minute. It was played on 7 days in your theatre, but we will explain the circumstances.

How about Twentieth Century-Fox, how many from Twentieth Century-Fox 7 day availability? You will stipulate to that, won't you? [1839]

Mr. Johnston: I would imagine none.

Mr. Mitchell: The product played in its own theatres.

Mr. Corinblit: How many pictures from the defendant Warner Bros. on 7 day availability? Can we have a stipulation on that?

Mr. Mitchell: Three.

Mr. Corinblit: How many on the top half from the defendant RKO?

Mr. Mitchell: I have no idea.

Mr. Corinblit: There is only one picture. It is Vendetta. It is in our schedule.

The Witness: You asked me about RKO?

Mr. Corinblit: Yes.

The Witness: I found one so far.

Mr. Corinblit: That's all. There was only one picture.

How about the defendant Universal, same period?

The Witness: One picture.

Q. (By Mr. Corinblit): From United Artists?

A. I don't find any.

Q. Finally, from Columbia, not a defendant in this case, but Columbia Pictures?

Mr. Corinblit: Could we save time and stipulate

(Testimony of Alex Schreiber.)

it is 6, subject to correction, on our play-off. I think [1840] that is correct.

Mr. Mitchell: Right.

Mr. Corinblit: That is on the top half.

Mr. Johnston: Do you propose to put down the number of pictures offered to Mr. Schreiber on the 7 day availability?

Mr. Corinblit: We will get to the terms and conditions under which they were offered, counsel. That is what this case is about.

Q. Mr. Schreiber, did you—

The Court: Now, just a minute. This totals 13 pictures, is that right?

Mr. Corinblit: 13 from all eight companies, that is correct.

The Court: You say these are the only pictures you got for the top half of the double bill during this period of time?

Mr. Corinblit: On the 7 day availability, your Honor.

The Court: On 7 day availability.

The Witness: From those companies, yes.

The Court: What did you use the rest of the time?

The Witness: Re-issues, 14 day, 21 day, 28 day, four months pictures, to keep the theatre open.

Mr. Corinblit: Yes. Now, the total for all companies, 13 for the defendants in this case—we have got 2, 5, 6.

Q. Now, turning to these six pictures that the defendants in this case played as top half of the

(Testimony of Alex Schreiber.)

bill—from the defendants in this case—turning first to RKO the picture *Vendetta*.

Mr. Mitchell: RKO is not a defendant in this case.

Mr. Corinblit: Pardon me. Turning first to Warner pictures, the first three pictures. The first picture you played was *Pretty Baby*.

Q. What was the box office quality of that picture—box office classification? A. Very poor.

Q. And turning to—

The Court: Now, just a minute. You mean to say it was very poor in your theatre, or are you speaking for the industry as a whole?

The Witness: For the industry as a whole. It was a poor picture. It would be a “C” or “D” picture.

The Court: How do you know that?

The Witness: Well, I know that very few theatres played the picture and where it did play, most of the places played it as a second picture.

The Court: Then your opinion is that this picture was a “C” or a “D” picture? [1842]

The Witness: Positively. It was no *My Blue Heaven* and it was no *Broken Arrow* and it was no *Man With a Grey Flannel Suit* and no *Guys and Dolls*. It was no *King And I* and I can go on from here until 4:00 o'clock.

Q. (By Mr. Corinblit): Now, Mr. Schreiber, the second Warner picture you played was the picture *Kiss Tomorrow Goodbye*. What was the box office classification of that picture?

(Testimony of Alex Schreiber.)

A. That would be, I would say a B picture. It was a little less than an A picture, or you may class it as an A, but not a double A or a triple A or percentage picture. It was all right. We would like to have had more of them. We couldn't get them.

Q. Now, with respect to the picture *Tea For Two*. That was also classified in the A category?

A. Yes, that is a good picture. That was an A picture and it was percentage and it played in a lot of places. We would like to have had a lot of those pictures.

Q. Now, with respect to the Paramount picture *Sunset Boulevard*, what was the box office classification?

A. Very good, and a very good picture and I put that in there as a double A or triple A or percentage picture.

Q. And with respect to the picture *Samson and Delilah* which you played—before you do that, do we have the detail on the theatres in which that picture had played the year before [1843] in Inglewood? I think there were two theatres, counsel. Do you have the detail on that?

Mr. Mitchell: No.

Mr. Corinblit: I have made some inquiry about it. Perhaps we can arrive at a stipulation.

Q. Now, how about the one picture you got from Universal which is the picture *Desert Hawk*. What was the box office classification of that picture?

A. I would say that is a little better than *Pretty Baby* and not as good as *Kiss Tomorrow Goodbye*



(Testimony of Alex Schreiber.)

and no where near the quality of Tea For Two.

Q. Now, turn for just a moment to the Warner picture that you bought, Tea For Two. The exhibit in evidence shows you paid for Tea For Two a total for one week of \$1500—Paradise rental \$1500.

Mr. Corinblit: We would like to offer in evidence, your Honor, at this time, the Joint Distributor Defendants' Exhibit D-2—Joint Plaintiff and Defendants' Exhibit D-2 and Joint Plaintiff and Defendants' Exhibit D-3. And we will substitute photostats for the copies that have been provided by counsel.

These are the cut-off cards for Warner 1949, 1950 and '51.

(Documents handed to Mr. Mitchell.)

The Court: They may be received in evidence.

The Clerk: Exhibits 57 and 58 in evidence.

(The exhibits referred to were marked Plaintiff's Exhibit 57 and Exhibit 58, and received in evidence.)

Mr. Corinblit: There are quite a number of things I want to take out of these exhibits. This may be a good time to stop for lunch.

The Court: Very well.

Ladies and gentlemen, we are about to take a recess again, and it is my duty to admonish you not to discuss this case with anyone. You are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [1845]

Tuesday, July 31, 1956, 2:00 o'clock

The Court: Is it stipulated the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

#### ALEX SCHREIBER

the witness on the stand at the time of the recess, having been previously duly sworn, was examined and testified further as follows:

Redirect Examination—(Resumed)

Q. (By Mr. Corinblit): Mr. Schreiber, I will show you Exhibit 57, which has been admitted in evidence, which is the Warner's cut-off cards for the 1949-50 season, and call your attention particularly to the Academy, Fifth Avenue, or United Artists cards, having reference to first run, Inglewood, at 7 day availability.

I will ask you if you will give me the number of the release and the film rentals indicated, together with the play dates for each picture that is indicated there, starting with the first one, indicating the picture being played.

A. You mean from the very first?

(Testimony of Alex Schreiber.)

Q. Each one of these that show a picture was played in [1846] one of the Fox theatres. Do you have a release number of the first picture?

A. It doesn't—

Q. The first release number is release 911, is that right?

A. Yes, but does Ac. mean Academy here?

Q. Yes.

Mr. Mitchell: Your Honor, this is a cut-off card which is the property of Warner Bros., and the witness has probably never seen it to date.

Wouldn't it be better if you just read it, Mr. Corinblit? You understand it and I doubt if he does.

Mr. Corinblit: That would be a better way, no doubt.

The first release number played at a Fox house is release No. 911. The play date is 2/24 to 3/2/50. The film rental paid for that first week is \$1,013.79.

The second one is release 919, the play dates 4/15-4/20, and the film rental for the week \$977.78.

The next picture is 921, played 5/30 to 6/5, and the film rental \$1,675.17.

The next release number is 922, which is 6/18 to 24, and the film rental is \$1,127.90.

Finally, No. 930, 8/16 to 22/50, film rental \$1,581.80. [1847]

The Court: Now, those pictures you are talking about were played where?

Mr. Corinblit: All right, sir. The first picture was played at the Academy, the second one is at the

(Testimony of Alex Schreiber.)

Academy, and the third and fourth were at the Academy—all at the Academy.

The Court: These were Warner pictures?

Mr. Corinblit: Warner pictures, your Honor, played at the Academy, and these here are film rentals that were paid for the pictures.

Mr. Mitchell: 7 day availability.

Mr. Corinblit: 7 day availability.

For the 1950-51 season, we have the picture 005 played 10/4-11. It played at the Fox Theatre at \$1,250 flat.

The second one is 006, 10/18-24, at the Academy, and the film rental is \$1,275.52.

The next one is 007, 11/15-21, played at the Academy, and the film rental is \$1,184.70.

The release number 008, 11/1-6, Academy, for a film rental for 7 days of \$1,114.10.

Release 009, 12/20-30, at the Academy for \$3,825.

Release No. 010, 11/29-12/5, and the film rental is \$1,412.06.

Then release No. 012, which is 12/31-1/6 at the Academy, \$650. [1848]

That last may have played as a second feature.

Mr. Westbrook: I don't think there is any question about it.

Mr. Corinblit: I think this one is not appropriately in there.

027, which is 7/25-31, at the Academy, for \$934.19.

028, 7/31-8/6 at the Academy, for \$610.39.

029, 8/15-21 at the Academy, for a film rental of \$1,137.32 for a week.

(Testimony of Alex Schreiber.)

And finally 030, 9/2-8, film rental of \$1,690.03.

Mr. Mitchell: What is the last figure?

Mr. Corinblit: \$1,690.03.

Now, I will go through here, first starting back here, the ones that are over or under. The red will be those under 1,500. This one, this one, this one.

The Witness: Would you mind circling those, Mr. Corinblit. I could see them better if you circled them.

Mr. Mitchell: This is Mr. Corinblit's argument.

The Witness: I can't see them very well from up here.

The Court: I *don't* if it is necessary for you to see them.

Mr. Corinblit: We will just mark them now, Mr. Schreiber. [1849]

Q. (By Mr. Corinblit): Mr. Schreiber, after you had paid \$1500 for Tea For Two in the early fall of 1950, when you negotiated with Warner Bros. for the picture Tea For Two, after that date did Warners offer to negotiate with you for the 7 day availability? A. No.

Mr. Mitchell: You are using the word "negotiate" as distinguished from bid, aren't you?

Mr. Corinblit: Yes.

Q. Now, Mr. Mitchell in his schedule that made reference to grosses which you had on some of the—on all of the—substantially all and I think probably all, the pictures on a 7 day availability, would you tell the jury, Mr. Schreiber, from a theatre's point of view, what effect on a theatre's gross is

(Testimony of Alex Schreiber.)

realized by having an established policy in the theatre—that is with respect to either 7 days or first run as distinguished from a hit or miss policy?

A. Well, when a theatre can stay on a first run Los Angeles availability you can keep playing first run, first run, first run, first run, first run, right down the line. It can't help but be a successful theatre, if they played 7 day pictures, which is 7 days after the first run got through with the pictures, and continued on 7 days right down the line continuously for months and years. They can't help but be successful because the people form a habit [1850] of going to that theatre knowing that they will go there and see a picture. They don't have to go out of their area or into another community and look for a parking place or take the time of driving up and back from another area.

If they can see it in their own neighborhood theatre, they prefer to come to their neighborhood theatre. It is more of a service to the people in that community. And especially if they can put two "A's" or a double A and a single A or an A and B picture together. There is no question about it is going to be a successful operation.

Q. Now, what is the reverse effect? What is the effect on a theatre where you have 7 day pictures hit or miss—that is, you may have a 7 day picture on one occasion and then go a month or six weeks until you get another 7 day picture suitable for the top half?

A. That cannot be construed as a successful pol-

(Testimony of Alex Schreiber.)

icy because you just antagonize your public by bringing them into a theatre to see one picture and have to sit through an old picture or a picture they maybe have forgotten about and which they had seen elsewhere. They just leave your theatre and say, "Why come here when I have got to sit through an old picture to see the new picture when I can go somewhere else and see two new pictures on the same bill for the same amount of money. Why should I go to the Paradise Theatre or any other theatre that has a hit and miss policy." [1851]

The Court: May I ask the witness a question?

Mr. Corinblit: Yes.

The Court: Based on your 30 years' experience in the motion picture industry, do patrons go to a motion picture theatre to see a particular picture?

The Witness: Yes, sir. In the old days patrons used to come to a theatre automatically.

The Court: They don't go to a theatre just because it is a first run theatre, but they wait until they see a picture they want to see and then they go, is that right?

The Witness: That is correct. They go where the best program is.

The Court: Then what difference does it make if they go to see the picture as far as the picture is concerned? What difference does it make about the policy if they look to see what picture you are playing? They go to see the picture that they want to see.

The Witness: But they wouldn't go and see a

(Testimony of Alex Schreiber.)

program that we advertise Triple Trouble and Tea For Two—they wouldn't come to the Paradise, but they will go where Tea For Two and My Blue Heaven is playing. That is where they are going. They are going out to the movies, so they are going where there are two A pictures. It is just the same as with today's newspaper and last week's newspaper. If last week's newspaper and this week's newspaper were laying on [1852] the same table, they wouldn't pick up and read last week's newspaper. They would pick up today's newspaper and read it.

Mr. Mitchell: May I point out what that statement means as to substantial competition?

Q. (By Mr. Corinblit): Now, Mr. Schreiber, we put into evidence yesterday the profit and loss statements for the Paradise Theatre from August 1, 1950 to July 31, 1951, showing a loss after depreciation of \$35,992.76 for that period.

Mr. Corinblit: We would like to offer in evidence at this time Plaintiff's Exhibit 45-Q-1, which is the profit and loss statement of the Loyola Theatre.

These include the Loyola Theatre for the six months period ending June 30, 1951, the three months ending March 2, 1951, the nine months ending September 29, 1951, the twelve months ending December 1950, and nine months ending September 30, 1951.

Mr. Mitchell: May I object to that on the ground it is not proper redirect examination. [1853]

\* \* \* \* \*



(Testimony of Alex Schreiber.)

Q. (By Mr. Corinblit): Now, Mr. Schreiber, with respect to the question of comparing theatres, and this is not with respect to the damage issue particularly, but directly to this type of chart, in licensing your pictures from distributors there has been some testimony in this record with respect to [1855] the matter of sliding scale from the point of view of paying film rental to a distributor.

Is a lower sliding scale more advantageous in licensing pictures to the distributor than a higher sliding scale?

A. The higher sliding scale is what they try to get. [1856]

The Court: You mean the distributors.

The Witness: The distributors try to get. They try to get as high percentage as they can.

The Court: Ever since you have been in the motion picture industry, it has been your experience, has it not, that the distributors try to get as much as they can for the pictures, and the exhibitors try to pay as little as they can?

The Witness: That is 100 per cent correct.

The Court: There has always been a contest, hasn't there?

The Witness: Yes, sir, there sure has.

The Court: And the successful operator, as far as the motion picture industry is concerned, the successful exhibitor is the one who can get the picture at the lowest figure?

The Witness: That's right. That is the chains.

Mr. Mitchell: I move to strike the last statement

(Testimony of Alex Schreiber.)

on the ground it is argumentative and a conclusion,  
“That is the chains.”

The Court: That is what?

Mr. Mitchell: He said, “That is the chains.” He pretends——

The Court: I don’t know what he means, do you?

The Witness: The chains.

Mr. Mitchell: I know exactly what he means.

The Court: It may go out. I don’t know what he means. I don’t think the jury knows what it means, either. You have an advantage on us.

Mr. Corinblit: We will mark as Plaintiff’s Exhibit next in order a contract between Columbia Pictures Corporation and Exhibitors Service for the Paradise relating to the picture Brave Bulls.

\* \* \* \* \*

We will mark this as Plaintiff’s exhibit next in order.

The Clerk: 59 for identification.

(The exhibit referred to was marked as Plaintiff’s Exhibit No. 59 for identification.)

The Court: Well, wait a minute. You have got an offer before the court. Let’s dispose of that.

Mr. Corinblit: This is the document, your Honor.

The Court: There is no objection. It will be received in evidence. I have been waiting to see if there was an objection. It may be received in evidence.

The Clerk: Exhibit 59.

(The exhibit referred to was received in evi-

(Testimony of Alex Schreiber.)

dence and marked as Plaintiff's Exhibit No. 59.)

Q. (By Mr. Corinblit): Exhibit 59 has a sliding scale which relates to this picture. It runs from 30 per cent at a 293.34 figure to 40 per cent at a 377.13 figure.

Now, we ought to have, I think, Mr. Schreiber, a little more explanation to the jury about the sliding scale. Under this agreement, it is a fact, is it not—

Mr. Mitchell: Why don't we not ask leading questions? [1859] Here we are on a company that is not even a defendant, and whatever they charge for the sliding scale must be all right, because they don't sue them, and now he is about to lead and suggest to the witness what to answer. I suggest he ask the questions properly.

Mr. Corinblit: All right.

Q. Mr. Schreiber, what film rental under the sliding scale would the Paradise pay on a gross receipt per tenth up to and including 293.34, what would be the film rental?

A. If we took in \$2,933.40, there is ten tenths to the week, and I think someone explained prior to me it is considered that Saturday is two tenths and Sunday is three tenths, and the rest of the week one tenth, because they are evening houses, and Saturday and Sunday include a matinee, and Sunday is the best day of the week.

There is ten tenths in the week. On that basis the Paradise, if they grossed and took in \$2,933.40, they

(Testimony of Alex Schreiber.)

would pay 30 per cent of \$2,933.40, and it continues. If they pay 31 per cent of—

The next figure would be \$2,933.40. Then you add to that 293.34 to the 2,933. Each day you add one more point from 30 to 40—not each day. Each point goes up a separate figure.

Now, based on that figure, when Mr. Zabel was up here, I think he said when they started at 20 per cent, they [1860] figured a profit in there and the higher percentage they go the more profit they made.

We start at 30 per cent. On the same comparison, the Academy Theatre or the Fox theatres or the United Artists Theatre Circuit took in \$2,933, they would only pay 20 per cent of that, which would be about \$586.

If the Paradise took in \$2,933, the Paradise would pay 780 or practically \$800 for the same picture that the Fox theatre group and the United Artists theatre group would have paid \$580 for. That goes right down the line.

When the Paradise would pay 40 per cent, if they would take in \$3,771, then they would be required to pay 40 per cent of \$3,771, which is roughly over \$1,400. The Paradise would pay over \$1400.

But if the United Artists Theatre or the Fox Theatre or their group buys that on the 20-40, which was their standard policy, buying policy—

Mr. Mitchell: I object to that, which was their standard policy. This witness is rolling on and on

(Testimony of Alex Schreiber.)

and arguing a matter that is way beyond his knowledge, your Honor.

The Court: I think this is argument.

Mr. Mitchell: I move to strike it out.

The Court: I don't know where the witness has the right to comment upon the testimony of another witness.

Mr. Corinblit: I agree, your Honor. [1861]

The Court: I think the whole answer should go out. [1862]

\* \* \* \* \*

Mr. Corinblit: We will mark the plaintiff's exhibit next in order. [1865] I think these ought to be numbered A. What is the next number?

The Clerk: 60.

Mr. Corinblit: 60-A is a contract, Fox West Coast on behalf of the Loyola Theatre and Paramount, for the picture Captain China, dated February 16, 1950.

The Court: It may be marked.

Mr. Corinblit: This is for identification only at this time, your Honor.

The Court: It may be marked for identification.

The Clerk: 60-A.

(The exhibit referred to was marked Plaintiff's Exhibit 60-A for identification.)

Mr. Corinblit: And 60-B, the deal sheet showing the contract between Fox West Coast Agency and Universal for the picture A Woman's Vengeance, which is dated March 5, 1948.

The Clerk: 60-B.

(Testimony of Alex Schreiber.)

(The exhibit referred to was marked Plaintiff's Exhibit 60-B for identification.)

Mr. Corinblit: And as 60-C the contract between Fox West Coast on behalf of the Loyola Theatre and Paramount with respect to the picture Golden Earrings, dated 12/23/47.

(The exhibit referred to was marked Plaintiff's Exhibit 60-C for identification.)

Mr. Corinblit: I will mark next the deal sheet with respect to the picture of Warner Bros., The Last Fling, having [1866] reference to the Loew's State, Chinese, Uptown and Loyola Theatres, dated June 21, 1949.

The Clerk: 60-D for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 60-D for identification.)

Mr. Corinblit: 60-E, a contract of Fox West Coast on behalf of the Grauman's Chinese, Loew's State—I beg your pardon—on behalf of the Loyola Theatre only for the pictures Two Smart People and Cockeyed Miracle, dated November 25, 1946.

The Clerk: 60-E for identification.

(The exhibit referred to was marked Plaintiff's Exhibit 60-E for identification.)

Mr. Corinblit: And finally, as 60-F, the deal sheet for Warner's picture House Across the Street, for the Loew's State, Chinese, Uptown and Loyola Theatres, dated July 29, 1949.

Mr. Mitchell: May we see those?

Mr. Corinblit: Yes, certainly.

(Testimony of Alex Schreiber.)

I will offer in evidence the Plaintiff's Exhibit 60-A, the first one. [1867]

Mr. Mitchell: I object to this, your Honor, upon two grounds.

The Court: There is no question so far. You asked to look at them.

Mr. Mitchell: I thought he had offered them.

Mr. Corinblit: I do offer the exhibit at this time.

Mr. Mitchell: I thought I understood him to say he offered it, your Honor, and in response to that I want to object to it, first, upon the ground it is a first run contract. It has no reference to the problem that we are talking about here of sliding scale for 7 day pictures.

In the second place it is long before the Paradise opened, namely, on February 16, 1950. And what kind of a contract Paramount made with the Loyola in any respect of Captain China to play February 16, 1950, is immaterial. It gets into another confusing issue, your Honor. [1868]

\* \* \* \* \*

The Court: I am going to sustain the objection.

Mr. Corinblit: All right, your Honor.

Q. Now, Mr. Schreiber, Mr. Johnston asked you some questions about your meeting with Mr. Decker and Mr. Epstein. Who was the first person to approach you in connection with the Joe Schenck transaction? Who was the first person that contacted you?

A. Mr. Sam Decker told me that—

(Testimony of Alex Schreiber.)

The Court: He didn't ask for the conversation. He asked for the name of the person who first approached you.

The Witness: Mr. Sam Decker.

Q. (By Mr. Corinblit): And subsequently Mr. Decker introduced you to whom?

A. To Irv Epstein of Fox West Coast Theatres.

Q. And Mr. Epstein, as you have already testified, told you that Mr. Schenck had asked him to contact you, is that correct?

A. He told me he had one of the ten biggest men in the industry that wanted to buy a half interest in the Paradise Theatre.

Q. Did you at any time—first, let us talk about 1949. Did you make overtures to Mr. Schenck?

A. No, never.

Q. All right. You responded to overtures made by them, is that correct? [1872]

A. By the appointment—

Mr. Johnston: I object to that as calling for a conclusion of the witness.

The Court: It is a conclusion. I think the objection is good. We have gone into this once before.

Mr. Corinblit: Well, your Honor, Mr. Johnston went into it on cross examination, and I wanted to straighten out a couple of matters. I will withdraw the question.

Q. Mr. Schreiber, with respect to the question as to who was to obtain an interest in the Paradise Theatre, relating to the Schenck transaction, in the



(Testimony of Alex Schreiber.)

first contact with you, will you indicate what was the percentage of interest that was requested—what was the percentage of interest that was requested?

A. Fifth per cent.

Mr. Johnston: I object to that as having all been gone into. It has been asked and answered.

The Court: Objection sustained. There wasn't anything gone into concerning that figure as far as cross examination was concerned.

Mr. Corinblit: All right, your Honor.

The Court: The only question raised as I remember, was whether or not Mr. Schreiber had employed certain people as agents or brokers.

Mr. Corinblit: All right, your Honor. There was one [1873] other matter, your Honor, which I would like to clear up.

Q. How long after the meeting of March 1949 did you decide in your own mind to proceed with the Paradise Theatre alone?

A. I waited from the time I went back to Detroit in about the middle of April, for maybe a few months, and during that few months Mr. Epstein, I believe, called me on the telephone or called me—or I called him on the telephone or he wrote me a letter or I wrote him a letter and he sent me a wire telling me that he thought his people were going to meet me in New York or Florida or back in California.

And he told me, I believe, on the telephone or mail or wire that Mr. Schenk was in a meeting

(Testimony of Alex Schreiber.)

in Miami or New York with Mr. Skouras. I believe it was in the trade papers——

Mr. Johnston: I am going to move to strike this answer as being not responsive and also conclusions and speculations of the witness.

The Court: Objection sustained.

Mr. Johnston: He said “either that or I or” something else.

The Court: Objection sustained.

Mr. Corinblit: Does your Honor in sustaining the objection just strike the latter portion of the answer? [1874]

Mr. Johnston: I move to strike everything after “a few months.”

The Court: Now, he has gone into the trade papers. That is not responsive.

You can answer the question: Was it three months, five months or five years? You can answer that.

The Witness: I would say within two to six months—wait a minute. That would be 1950—no, 1949. We broke ground in October——

The Court: We just want the time.

Q. (By Mr. Corinblit): How long after the conversation of March 15, 1949, when you came back from the vacation in early April, was the first time after that time that you finally decided to go ahead on your own?

A. I believe within 60 days to 90 days I decided to go ahead with the building of the theatre.

(Testimony of Alex Schreiber.)

Q. Now, did you have a conversation with Mr. Epstein on the telephone concerning the prior negotiations you had with Mr. Schenck?

A. Yes, I believe I did.

Mr. Johnston: Just a minute. I object to that as leading and not proper redirect examination. I didn't go into any phase of that.

The Court: Objection sustained. That wasn't gone into. And the witness already has testified to that. [1875]

Mr. Corinblit: All right, your Honor.

Q. Now, with respect to the questions that were asked by Mr. Johnston having to do with Mr. Toplikar, Mr. Johnston read into evidence a letter. Would you tell the court and the jury what arrangements Mr. Toplikar made with you with respect to these two advertisements that Mr. Johnston referred to in his letter?

Mr. Johnston: I didn't refer to them. Mr. Schreiber did in his letter.

The Court: Well, the letter said something about the advertisements.

Mr. Johnston: That is right. It wasn't something I referred to. Mr. Schreiber wrote the letter. I didn't write the letter.

Mr. Corinblit: You read it.

The Court: The objection is overruled. Go ahead.

Will you read the question, Mr. Reporter.

(Question read.)

(Testimony of Alex Schreiber.)

The Witness: When I was getting ready to leave Detroit Mr. Toplikar was very broken-hearted because of the fact that I didn't—

The Court: Nobody asked you whether he was broken-hearted or not. That is not material. I don't know. He may have died of a broken heart, but that isn't what you were asked. Read the question to the witness, Mr. Reporter. [1876]

(Question read.)

The Court: Do you understand that?

The Witness: I think I do.

The Court: There was nothing said about health in the question. Now, see if you can answer the question.

The Witness: Mr. Toplikar knew I was going back to Detroit and he wanted to know if I had any deals or any property or anything he could sell for me or he could develop for me while I was in Detroit. I told Mr. Toplikar that the mortgage company have turned me down for mortgages on the Valley Plaza and Valley Village Theatres and if he wanted to handle the sale of those two lots and earn himself a commission, I would pay for the advertising to advertise the lots for sale and use his name so people could inquire from him, and if he could make a deal on the lots that would be another way he could earn a commission.

The Court: That had nothing to do with the Paradise Theatre?

The Witness: No, it did not.

(Testimony of Alex Schreiber.)

The Court: It only had to do with the situations in the Valley?

The Witness: He wanted some listings of property.

The Court: Wait a minute. I didn't ask that. It only had to do with the situations in the Valley. You can answer that "Yes" or "No." [1877]

The Witness: Yes, sir.

Mr. Corinblit: Your Honor, there is a new subject that I want to go into and this might be a good breaking off point.

The Court: Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone, you are not to permit anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties in this case until it has finally been submitted to you.

With that admonition we will now recess until 10 minutes after 3:00.

(Short recess.) [1878]

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

The Court: You may proceed.

Mr. Corinblit: I might say, your Honor, the estimate I made last Friday of when we expect to close our case has been moved up. I think we will

(Testimony of Alex Schreiber.)

probably close our case by tomorrow afternoon, and I have so informed counsel.

With respect to the exhibits, your Honor, that we have marked, I would like to offer in evidence, and first mark as Plaintiff's exhibit next in order the 7 day chart, which will be Exhibit 61. I will offer that in evidence.

The Court: In evidence.

The Clerk: Exhibit 61.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 61.)

Mr. Corinblit: As Exhibit 62, the chart showing the total number of top half pictures played in the Paradise on 7 day availability.

The Court: In evidence.

The Clerk: Exhibit 62.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 62.)

Mr. Corinblit: And as Exhibit 63, the film rental comparison with other 7 day exhibitions of Warner pictures. [1879]

The Court: In evidence.

The Clerk: Exhibit 63.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 63.)

Mr. Corinblit: Next, the parties have stipulated with respect to 4 pictures on the play-off of the

(Testimony of Alex Schreiber.)

Paradise Theatre. With respect to the Metro pictures Lady Without A Passport, Summer Stock, Happy Years, Three Little Words, and Nancy Goes To Rio, the stipulation is that those pictures be designated as spot booking on the Paradise chart. Is that correct?

Mr. Mitchell: That is right.

Mr. Corinblit: The next matter, your Honor, is a matter we reserved, and I am going into it on direct as distinguished from redirect, unless they want to recross on the other issues at this point.

Mr. Mitchell: Your Honor, there is only one point I would like to go to into on recross up to this point, and that is in view of the implications of the jurors on the piece of paper, I would like to read into evidence Plaintiff's Exhibit No. 45-J, which is the Loyola play-off giving the dates, the pictures, the distributor, and the availability.

Mr. Corinblit: Are you talking about the Loyola play-off, Mr. Mitchell.

Mr. Mitchell: The Paradise play-off.

The Court: You want to read it into evidence?

Mr. Mitchell: Yes.

The Court: All right. I don't care. You can do it now.

Mr. Mitchell: As far as I am concerned, there isn't any other redirect on the matters you have touched on.

Mr. Johnston: I have no further cross examination as the record now stands.

(Testimony of Alex Schreiber.)

The Court: All right. You can read that into the record.

Mr. Mitchell: If I may, to indicate the Paradise Theatre play-off. [1881]

\* \* \* \* \*

Mr. Corinblit: On Exhibit 45-J the picture Up Front is corrected now to read 14 days instead of 7 days.

Mr. Mitchell: That is correct.

Mr. Corinblit: On Exhibit 45-J, the picture Lady Without A Passport is now corrected to read "spot booking."

Mr. Mitchell: That is right.

Mr. Corinblit: The picture Summer Stock and Happy Years I am adding the words "spot booking."

Mr. Mitchell: That is correct.

Mr. Corinblit: And the picture Three Little Words and Nancy Goes To Rio, spot booking.

Mr. Mitchell: That is correct.

Mr. Corinblit: I have inserted those entries on Exhibit 45-J.

Mr. Mitchell: Yes.

Mr. Corinblit: This is on direct examination, your Honor.

Mr. Mitchell: This is, just so we understand each other, this is a new subject you are opening up?

Mr. Corinblit: Yes.

Mr. Mitchell: And subject to cross examination?



(Testimony of Alex Schreiber.)

Mr. Corinblit: Yes. This is a direct matter that we held in abeyance.

Q. Mr. Schreiber, in about November, 1950, did you cause to be carried out a survey using questionnaire cards [1888] to people living in the Westchester area?

A. I didn't do it myself, but I had it done.

Q. I will show you as an exemplar a card which is headed "Paradise Theatre Survey, November 1950," and ask you whether this is the card which you used with respect to that survey?

A. That is correct.

Q. Now, with respect to the entries on the card, who drafted the entries—that is, who drafted the question? A. I did.

Q. Now, will you tell us what procedure you followed with respect to obtaining answers on the cards—that is, how was that handled?

A. I had the cards made up. Then I had my manager call the Loyola College and ask the dean at the Loyola College if he had some boys or girls who wanted to make some spare money after school hours or on Saturdays and Sundays; that I had a questionnaire that I wanted these students to go to house-to-house during the day time, not in the evening and fill in these questionnaires.

We wanted to know where the people of the Westchester area were going to see movies.

The next day or two they sent me about 4 or 5 boys, and I believe two girls, and I had these blank

(Testimony of Alex Schreiber.)

cards, and I explained to them what I would like to have them do by going [1889] house-to-house ringing the doorbells or knocking on the door, and explain to the occupant of the house that they were sent out by the management of the Paradise Theatre and that they had a little questionnaire they would like to have filled out and would they be kind enough to answer the questions, sign their names so that would be an indication that they personally filled out the cards, rather than have the boy or girl do it on their own accord which would make it more authentic, and at the same time when they filled out the questionnaire they were instructed to leave a free pass good for one or two, I don't remember, with the occupant of the house and invite them, if they hadn't been to the Paradise, that the complimentary ticket would admit them to the theatre to see what we thought we one of the finest theatres in Southern California. These boys and girls went out into the various areas that I believed are designated on a map that I had hanging on my office wall, a map that was furnished to me by Mr. Worthington of the Ayers office, and I just picked at random, and I said, "You take this section," and the next fellow I said, "You take this section," and the girl, "You take this section," and the other fellow, "You take this section," and another one, "You take this section."

We agreed on, I think, 65 cents an hour or 65 cents for three cards or four cards, or something.

(Testimony of Alex Schreiber.)

We figured about how long it would take them to answer a card or we may have made [1890] a deal on so much a card. I don't remember that.

They went out and the first night they brought the cards in and the second night they brought the cards in, and maybe the fifth day they brought cards in and after the second or third time I noticed that the girl, one of the girls was very good in knowing what we wanted, and the fellows were kind of dropping out. They didn't like the job.

I turned over the balance of the cards to the girls, one of the girls, and told her to try and get the rest of the cards filled out with other boys or other girls, and after we had I think about 600 cards filled out, we stopped.

Q. All right. As an exemplar I would like to read just the questions contained on the card to the jury at this time if that is agreeable.

The card is headed "Paradise Theatre Survey, November 1950."

The first question "Have you been to the Paradise?"

And then there is a space marked "Yes" and a space marked "No" and following that "Any suggestions".

Secondly, "What theatre do you attend" and then here is a space and then there is a question "Drive-in" and then a space for the answer either yes or no.

Then the third question, "Do you go to the

(Testimony of Alex Schreiber.)

movies” and then there is a space for the answer yes. And then “How often” and a space and then the word “No,” and a space, [1891] and the word “Why”.

Then the fourth question was, “What type of picture do you like? “Drama” and then a space, “Comedy” and a space. “Westerns” and a space, and “Musicals” and a space. Below that is “Mysteries” and a space and following that “Suspense” and a space.

The next question is, “Do you prefer single” and a space “or double bills” with a space.

Then the next question “Do you prefer early run pictures with higher admissions” followed by a space.

“Do you prefer pictures a couple of weeks later, two good pictures same bill with lower admissions” followed by a space.

Then, “Do you like shows special for children” and then a space for “Yes” or “No” or “Matinee”.

“What newspapers or medium used to go to the movies” followed by a space.

“Westchester Airport Tribune——

“Westchester News Advertiser——

“Inglewood —— Culver City —— Theatre Trailor and Lobby display ——”

“Have you a television set” followed by a space for “Yes” or “No.” And “Do you plan to buy one” followed by a space.

“Do you know about our telesonic hearing aids” with a blank space for the answer. [1892]

(Testimony of Alex Schreiber.)

“Do you know about our 1300 push back seats” and a space.

“Do you know about our cry room for small children” followed by a space.

“Do you know about our free parking lot, lighted and paved” and a space for the answer.

“Would you like to receive Preview Notices and other information by mail” and there is a space for a “Yes” or “No” answer.

“Do you drive to the theatre or walk” and there are spaces for answers.

And then the card is signed with the address.

We will offer just for identification as plaintiff’s next in order a chart—a schedule showing a summary of the Paradise cards, with respect to the particular questions and I will describe the question.

The Court: That may be marked for identification only.

The Clerk: 64 for identification.

(The document referred to was marked Plaintiff’s Exhibit 64, for identification.)

Q. (By Mr. Corinblit): Mr. Schreiber, I will show you—let me state for the record that we have all the cards, we believe all the cards here, and they have been made available to counsel for the defendants.

Mr. Schreiber, I will show you Plaintiff’s Exhibit 64, [1893] page 1, and call your attention to the fact that the reference shows “Paradise Cards: Question (1)” “What Theatre do you Attend?” and on the left hand side there are answers and on

(Testimony of Alex Schreiber.)

the right hand side are the total number of answers.

Was this chart prepared—was this schedule, summary of the cards prepared under your supervision?      A. It was.

Q. All right. Now, the entries under the question: "What Theatre Do You Attend" are the literal entries taken right off the card, is that right?

A. That is correct.

Q. And the total number under the "Total number answers" is the totals—are the totals, is that correct?      A. That is correct.

Q. Now, sometimes on the cards someone would enter a reference to two or more theatres and that fact is indicated by the asterisks on the first page and the summary of these two or more answers contained on the second page, is that correct?

A. That is correct.

Q. Now, the second question that we have summarized here is the question: "What Theatre Do You Attend? Drive In?" is that right?

A. That is correct.

Q. And the totals opposite the answers indicate the [1894] totals—indicate the total of answers which relate to the particular question, is that correct?      A. That is correct.

Q. And the third question that we have summarized is the question: "Have You Been to the Paradise" and then we have the total answers opposite "Yes" and the total answers opposite "No," is that correct?      A. That is correct.

(Testimony of Alex Schreiber.)

Q. Finally the question we have summarized under two headings, A and B is: "Do you prefer early run pictures with higher admissions?"

"Do you prefer pictures a couple of weeks later, two good pictures same bill with lower admissions," and the totals there are the totals which refer to the questions, is that correct? A. That is right.

Mr. Corinblit: Your Honor, we will offer Plaintiff's Exhibit 64 in evidence.

The Court: In evidence.

(The document heretofore marked Plaintiff's

Exhibit 64 was received in evidence.) [1895]

\* \* \* \* \*

Mr. Mitchell: The whole thing is unintelligible, but the letter "L" means Loyola and the "L.T." means La Tijera, I suppose the letter "P" means Paradise?

Mr. Corinblit: I will agree with that. The chances are that that is what it means. We are just looking at the cards as we have them. [1898]

\* \* \* \* \*

Q. Turning to the question, the first question, Mr. Schreiber——

The Court: Is that *you are all* going to read of that survey?

Mr. Corinblit: Yes, sir.

Now, with respect to the other, Mr. Westbrook had suggested a possible stipulation with regard to one other question, also, on two. If you will give me the total, I think we will stipulate to them subject to our final check.

(Testimony of Alex Schreiber.)

Mr. Mitchell: We would like to have you stipulate these cards show that 489 out of 579 said that they used automobiles to attend the theatre.

Mr. Corinblit: We will so stipulate, subject to a final check.

Mr. Mitchell: Out of 726 answers, a total of 17 said that they used the Inglewood newspapers to select motion pictures.

Mr. Corinblit: We will stipulate to that, subject to a final check.

Mr. Mitchell: Those are the only two other overall figures. We have some breakdown we want to talk about. [1902]

Q. (By Mr. Corinblit): Mr. Schreiber, I think you have stated that in August early 1950, it was your opinion the Paradise was not in substantial competition with the Academy Theatre in Inglewood. Calling your attention to the answers on this survey card, on the survey list, Plaintiff's Exhibit 64, with respect to identification of the Academy Theatre, was your opinion the same after that survey as it was before?

The Court: You can answer that yes or no.

The Witness: Yes.

Q. (By Mr. Corinblit): Calling your attention to your opinion that you testified to in August, that in your opinion the—incidentally, the number of people that mentioned the Academy by name is 7.

Mr. Mitchell: We have had that once. Do we have to go over and over it again?

The Court: It is necessary to do it to impress



(Testimony of Alex Schreiber.)

it upon the jury, by repeating it. The objection is sustained.

Mr. Corinblit: I didn't mean to do that, your Honor.

Q. Mr. Schreiber, you had an opinion prior to the opening of the theatre in August that your Paradise Theatre was not in substantial competition with the Fifth Avenue Theatre. Do you find any reference to the Fifth Avenue Theatre on this list at all?

Mr. Corinblit: I think we can stipulate there was [1903] no specific mention of the Fifth Avenue Theatre, can we not?

The Court: May I ask this witness a question?

Mr. Corinblit: Yes, sir.

The Court: Have you had any reason to change your opinion that you have heretofore expressed relative to substantial competition after you made this survey?

The Witness: No, sir. I still was of the same opinion.

The Court: All right.

Q. (By Mr. Corinblit): Now, turning to the fourth question: "Do you prefer early run pictures with higher admissions?" And the section, "B. Do you prefer pictures a couple of weeks later, two good pictures same bill with lower admissions?" Did you draft that question, Mr. Schreiber?

A. Yes, I did.

Q. Do you know why in the world anyone can answer no to that question?

(Testimony of Alex Schreiber.)

Mr. Mitchell: That is argumentative, your Honor.

The Court: He certainly is not going to draft a question and get the people to answer and then try to explain their answer away.

Mr. Corinblit: No, sir.

Q. Mr. Schreiber, I think you testified——

The Court: I think we can all stipulate a great majority of those who go to the picture shows think they pay [1904] too much.

Mr. Corinblit: There are just two other questions.

Q. You testified that shortly after this survey began, you caused it to be terminated, that is, you stopped it?           A. That's right.

Q. What was the occasion for that termination of the survey?

A. First of all, after looking through these cards several nights until maybe 2:00 o'clock in the morning, trying to figure out what they would indicate, in addition to the fact that these theatres were not in substantial competition, we were convinced they weren't by the cards we looked at, and then by looking over some of the other answers, when we came to the question about earlier pictures with higher admissions, and two good pictures on the same bill with lower admission, some friend of mine, or my son or somebody said to me, "You got conflicting questions there. You don't say in there, Do you prefer first run pictures with higher admissions? You just say earlier pictures, and you are running 21

(Testimony of Alex Schreiber.)

and 14 and 7 day pictures. Did you mean first run pictures, or did you mean earlier, 21, 14? Did you mean the 14 to 7? Did you mean the 7 to first? What did you mean?"

So there was a conflict.

The Court: You understood the question when you drafted it, didn't you? [1905]

The Witness: I did. That is where I made the slip.

Then the next question about Do you prefer pictures a couple of weeks later, two good pictures same bill with lower admissions, I didn't say lower admission at 35 cents, 40 cents, 25 cents, 50 cents. I just said lower admission. There was a lot of theatres at that time charging 30 cents, 35 cents, 40 cents. I didn't say, Do you prefer a picture like Guys and Dolls or Lieutenant Wore Skirts, which is showing over on Beverly Drive last week, or The Searchers, Meet Me in Las Vegas on the same program, plus a give-away of a thousand dollars on Tuesday night. I didn't ask that question, if they wanted to see that kind of picture with cheaper prices, although the public might have had that in mind, that that was the two type of pictures they would like to see for maybe 35 or 40 cents.

So when it was pointed out to me that there were conflicting answers, I said, "I have had enough."

Mr. Mitchell: You can see, your Honor, that the witness when he was asking me questions all the time had been practicing a long time.

The Witness: I was what?

(Testimony of Alex Schreiber.)

Mr. Corinblit: No further questions. [1906]

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Recross Examination

Q. (By Mr. Mitchell): Mr. Schreiber, you had never taken an audience survey before, had you?

A. An audience survey?

Q. Well, under your supervision you conducted a survey of the desires—as to the desires of people in the Westchester area. Had you taken that kind of survey before?

A. Personally I stood at the door many evenings when [1911] we first opened, and inquired from people where they came from. A lot of people——

Q. All right. I am trying to find out if you had ever conducted a survey like this, having people go from door to door or make some sort of survey?

A. Just the one I spoke about yesterday.

Q. You don't claim to be an expert on surveys, do you?

A. Myself?

Q. Yes.

A. No, I am no expert.

Q. You really didn't ask any question or questions designed to find out whether people in Westchester, if a picture were playing exclusively in one theatre in Inglewood on a 7 day run, whether the people in Westchester would go to that theatre, did you?

Mr. Corinblit: I object to that question as calling for a conclusion and speculation.

The Court: I think it is. The objection is sustained.

(Testimony of Alex Schreiber.)

Q. (By Mr. Mitchell): With respect to the questions that you did ask, Mr. Schreiber, I would like to, so that they will make some intelligent showing by grouping, I would like to go over them with you by groups. May I have the exhibit?

Since there is so much detail, I think the only way I can do it, your Honor, is to stand by him here and I will ask, [1912] since we are going to accumulate some of these out of this tremendous mass in the several groups, I will ask Mr. Westbrook to use our paper on the blackboard.

Do you have a title for what we are going to try to do here? Paradise survey is what we agreed on.

Now, in these cards here there are certain of the people that didn't answer this question at all:

"What theatre do you attend" and I would like to indicate by circling those figures so that we will leave those out of consideration.

For instance, some of them, 73 of them answered "None," correct?

A. Answered they didn't go to any theatre. That was our interpretation of that.

Q. So I will circle that "73" and then five of them said—perhaps if we get a piece of paper—then we have five "None very often?"

A. That is correct.

Q. Which we will circle and then we have got—

A. What would you interpret "None very often," if you go to a theatre, "None very often?"

Q. Well, just to make this comparison there is

(Testimony of Alex Schreiber.)

a group, two "None regularly" which we will circle.

A. All right.

Q. And there is a group of five which just said "No." [1913]

A. That is correct.

Q. And then there is one which says "Art" which doesn't indicate any particular theatre, certainly, or any particular location.

A. That is correct. [1914]

Q. Then there are two people that said "Just moved here," which certainly doesn't indicate where they go to the theatre.

A. That is correct.

Q. Then there are 72 which just left a blank on that question; correct?

A. That's right.

Q. And then one person answered "6 times" here, so he doesn't indicate or she doesn't indicate where she goes to the theatre or he goes to the theatre.

A. That's right.

Q. Then there is one that says none for over a year, which we will eliminate for the same reason.

Then there is one which says none, too high price.

Let's go back to page 1. I would like to run over with you the answers that indicate that people go to theatres in Westchester.

A. All right.

Mr. Corinblit: I won't move to strike, but that is a comment of counsel. Go ahead.

The Court: You have got the number of people there that indicated they go to theatres somewhere.

Mr. Corinblit: Yes, sir. The questions on the survey speak for themselves, not Mr. Mitchell, but go ahead.

Mr. Mitchell: I will read what they say and I

(Testimony of Alex Schreiber.)

think [1915] there won't be any dispute, at least I won't have any with Mr. Schreiber, I am sure.

92 say then went to the Paradise, so we will put outside here to indicate we are taking care of all these, we will put a 1 in a circle in this first category.

171 said they went to the Loyola. That is in Westchester, isn't it?

The Witness: That is correct.

Mr. Corinblit: What are you doing with that figure, Mr. Mitchell?

Mr. Mitchell: I am putting a little 1 to the side.

Mr. Corinblit: Are you putting that on the exhibit in evidence?

Mr. Mitchell: I am writing a little 1 on the exhibit.

Mr. Corinblit: If you will just designate it, I will put it opposite mine, so I can have a copy.

Mr. Mitchell: That's right.

Mr. Corinblit: All right, go ahead.

Mr. Mitchell: Then we come down here to "neighborhood 18." That isn't so definite, but certainly Westchester you consider a neighborhood, don't you?

The Witness: That's right.

Mr. Mitchell: So we will assume those people would go to the theatre in Westchester. [1916]

The Witness: Went either to the Paradise or Loyola.

Mr. Mitchell: Yes. Then there is another 15 people answered "locally."

(Testimony of Alex Schreiber.)

The Witness: Yes, sir.

Mr. Mitchell: So that sounds like Westchester, doesn't it?

Mr. Corinblit: Just a minute, your Honor, "that sounds like." I will object to that as calling for a conclusion of the witness.

Mr. Mitchell: I will withdraw the question.

Mr. Corinblit: If you want to put your numbers opposite anything you want to, you can go ahead. I am just pointing out it is a conclusion.

Mr. Mitchell: We will put a number opposite locally, a 1 number, for that first category we are talking about.

Here is a category that says "several different ones." We will put a 1 on that. No, I am wrong about that.

Here toward the bottom of the page there are 6 that answered L. and P. Do you have any idea what L. and P. means?

Mr. Corinblit: I object to that, your Honor, as calling for a conclusion of the witness.

Mr. Mitchell: He made the survey.

Mr. Corinblit: That's right, but this is the problem. [1917] This is what was entered on the card. That is why we put this on here as a literal translation of what is on the card.

The Court: I think I will sustain the objection because it is purely a conclusion, what it means.

Mr. Mitchell: All right. We will put a 1 opposite L. and P. in any event.

I thought at the time the exhibit was put in we



(Testimony of Alex Schreiber.)

had agreed that referred to Loyola and Paradise, but maybe I am wrong.

Mr. Corinblit: I just don't know.

Mr. Mitchell: There was one person that wrote "any area."

Mr. Corinblit: Is that "any in area?"

Mr. Mitchell: Any in area.

Mr. Corinblit: You are putting a 1 opposite that?

Mr. Mitchell: Putting a 1 opposite that. Then on the second page there are two persons that said "one close by," and we will put a 1 opposite that.

Then there is one person that said "Loyola and any picture." We will put a 1 opposite that.

Then there is one person that said "Have been to Loyola twice." We will put a 1 opposite that.

Now, if you will check with me on this adding machine tape, we have 92 with a 1 opposite——

Mr. Corinblit: Just a minute.

Mr. Mitchell: You can check here if you want to.

Mr. Corinblit: No. That's all right. Go ahead.

Mr. Mitchell: 92, 171, 18, 15, 6, 1, 2, 1 and 1, making a total of 307.

The Witness: That's right.

Mr. Mitchell: So those at least we interpret as being people that would go to either the Loyola or the Paradise, the only two theatres in Westchester.

Mr. Corinblit: Your Honor, I certainly move to strike the answer and object to the question on the ground this is nothing but pure argument. I

(Testimony of Alex Schreiber.)

don't know what these totals are. I don't know what summaries are being made.

The Court: It is an argument. You can take those figures, Mr. Mitchell, and argue anything you want to with the jury.

Mr. Mitchell: It is in a sense, your Honor, but ordinarily when you put a man on with a survey, you can show what the survey indicates, your Honor. Of course, they are conclusions, I recognize that, but here is the man that made the survey and we have him here now, and if he were really an expert on surveys, you would certainly be able to cross examine him on what the survey shows.

The Court: All right, but I don't know whether you can cross examine him on his opinion of the survey. [1919]

Mr. Mitchell: No, I am cross examining him on what the survey shows.

The Court: All right. You have got before the jury what the survey shows. Now you are asking him what his opinion is.

Mr. Mitchell: I don't want his opinion on it at all, your Honor. I want, as I would with any man making a survey, I want to make some sense out of the survey by showing what the groupings are.

The Court: All right. Go ahead. I think you are arguing, but all right.

Mr. Mitchell: To some extent it is so. I admit that, your Honor. But when you have a surveyor or a man who makes a survey on the stand, that

(Testimony of Alex Schreiber.)

type of question is the only type by which you can develop what the survey shows. [1920]

The Court: You had better go ahead before I change my mind.

Mr. Mitchell: Good, I will do that.

Q. Now, there is another group which we would like to describe as people who attend——

The Reporter: Mr. Mitchell, I don't know whether somebody heard an answer to that. I didn't hear an answer.

Mr. Corinblit moved to strike the answer and I didn't hear an answer.

Mr. Mitchell: There was no answer. There was no question. I think I made a statement.

The Reporter: That is right.

Mr. Corinblit: And I said I thought it was argumentative, your Honor.

Q. (By Mr. Mitchell): There is another group which we would like to characterize as being persons who attend other theatres in the Inglewood-Westchester area, meaning theatres other than the Paradise and the Loyola, and I would like to indicate them with the figure 2—La Tijera, Centinela.

Centinela is a drive-in? A. That is correct.

Q. The Inglewood Theatre or Inglewood?

A. Correct.

Q. Century, that is a drive-in?

A. That is right. [1921]

Q. Fox? A. Inglewood.

Q. Academy? A. Inglewood.

Q. United Artists. There is one that said "Santa

(Testimony of Alex Schreiber.)

Monica and Inglewood” and there is one that says “Ones Post Inglewood” and one says “Any.” Paradise, La Tijera-Inglewood. A. That is right.

Q. Two that say “All over—L.P. L.T.” One indicates “P—Inglewood.” Six that indicate “L.T.”

Four that indicate “L.L.T.” Two that indicate “L.T.” One that indicates “Inglewood, Loyola and others.”

Two that indicate “Local L. T. and L.”

One that indicates “L.T.—Loyola” and one that indicates “L.T. and Centinela.”

I would like to check these with you, Mr. Schreiber. These are the second category, 47?

A. Right.

Q. We will just run through them. We won't have to have too many words and it won't cost so much for the reporter to type them.

A. All right.

Q. 8, 3, 2, 7, 2, 1, 1, 1, 2, 1, 6, 4, 2, 1.

A. That is right. That is the one you just called off. [1922]

Q. No, I just called—I am going in order here. I called two and then a one.

A. Where is the one?

Q. There is the one. Excuse me. Here is your one here.

A. That is right. That follows the 2.

Q. Now, we come down to 2. A. Yes. 1.

Q. 1. A. 1.

Q. 1. A. That is right.

Mr. Mitchell: Just a minute. I missed a couple

(Testimony of Alex Schreiber.)

of single ones here. Here is one of those ones and we will mark that with a figure 2.

The Witness: "Any good show (L.P. L. T.)."

Mr. Corinblit: You are going back now, Mr. Mitchell?

Mr. Mitchell: Yes. I will tell you where that is if you want to mark it.

The Witness: It is the ninth from the bottom.

Mr. Corinblit: "L.—L.T. P."

Mr. Mitchell: "Any good show (L.P. L. T.)."

Mr. Corinblit: All right.

Mr. Mitchell: And then there is one other one underneath that that I missed—"L.—L.T. P." which we also mark— [1923] There are your two missing ones. A. Okay.

Q. Making a total of 104 which you indicate?

A. 104 is correct.

Q. Then there is another group which we will characterize as "Other theatres outside Inglewood-Westchester area" which I think you can follow with me. A. Okay.

Q. Which we will mark with the figure 3. Leimert, that is outside of the Inglewood-Westchester area, isn't it? A. That is right.

Q. All of these will be unless you indicate otherwise. Edwards?

A. That is right, drive-in, I believe.

Mr. Corinblit: How are you marking these?

Mr. Mitchell: With the figure 3.

Q. Studio? A. That is a drive-in.

Q. Uptown. A. Correct.

(Testimony of Alex Schreiber.)

Q. Mesa. A. Correct.

Q. Pan Pacific.

A. Correct. You had better write a little larger. You won't be able to tell your figures. [1924]

Mr. Corinblit: Mr. Schreiber, I am confused on the thing. If you will just let Mr. Mitchell ask the questions and go right on down the line.

Q. (By Mr. Mitchell): Baldwin. That is outside the Westchester-Inglewood area, is that right?

A. Yes, that is correct.

Q. Playa. A. That is right.

Q. Drive-ins generally? A. That is right.

Mr. Corinblit: Just a minute—oh, yes.

Q. (By Mr. Mitchell): Culver City?

A. That is correct.

Q. Pickwood. That is over in West Los Angeles? A. That is correct.

Q. Westwood. A. Correct.

Q. Downtown. A. Correct.

Q. Now, in the Loyola and Paradise, they don't have matinees, do they?

A. No, we didn't have any matinees except special kiddies matinees occasionally. [1925]

Q. This says "All theatres that have matinees," so we will mark that with a 3.

We will mark with a 3 "Mostly in L. A."

A. All right.

Q. "Leimert or Mesa."

Mr. Corinblit: Is that on the second page?

Mr. Mitchell: Yes.

Q. "Meralto in Culver City mostly."

(Testimony of Alex Schreiber.)

“All theatres Westwood.” A. All right.

Q. “Baldwin Hills and cheaper shows.”

Now, I would like to have you check those with me and see if we have all of them for the category

No. 3. A. Starting with 3.

Q. That's right. 3, 1, 8, 1—

A. Just a minute. All right.

Q. 4. A. Right.

Q. 1. A. Right.

Q. 2. A. Wait a minute. Yes, 2.

Q. The next is 1. A. 1.

Q. 6. [1926] A. Right.

Q. 2. A. Right.

Q. 1. A. Right.

Q. 1. A. Right.

Q. 2. A. Right.

Q. 1. A. Just a minute. 1. Okay.

Q. 1? A. Wait until I find that one.

Mr. Corinblit: Where is the one you have just read?

The Witness: I am looking for it. I think that is on the second page. Yes, it is on the second page.

Q. (By Mr. Mitchell): All right. Another 1.

A. Yes.

Q. Another 1. A. Right.

Q. And another 1?

A. That's right, and another 1.

Q. All right, another 1. A. That's right.

Q. That makes 39, the way we have it counted.

There is a fourth group which we won't take time to mark, because that is all that is left, which

(Testimony of Alex Schreiber.)

we will characterize as "Theatres wherever situated, depending upon pictures, and so forth," such as these, Mr. Schreiber:

"Where best pictures, all theatres, several different ones, wherever picture appeals, wherever good pictures are, any good shows, no particular one, varied, any, several, none in Westchester, depends on the show, different ones, various, the one that has two good pictures."

We can check those unmarked ones here, which amount to 99, if you will.

Mr. Corinblit: We will take that number subject to correction.

Mr. Mitchell: It is an adding machine tape.

Mr. Corinblit: Subject to correction, so we can move along.

Mr. Mitchell: That is 99. Now, just to complete the exhibit, Mr. Westbrook, as a matter of mathematics, will you put the percentage of the total number of people answering this questionnaire as to the theatres which they attended in terms of percentage?

Now, may I make a statement with respect to this percentage, your Honor?

The Court: All right.

Mr. Mitchell: The percentages show that these [1928] people in Westchester answering the questionnaire as to where they would go to the theatre show that 19 per cent would go to other theatres in the Inglewood-Westchester area, that is other theatres than the Loyola and the Paradise.



(Testimony of Alex Schreiber.)

That 7.1 per cent would go to theatres outside the Inglewood-Westchester area.

That 17.9 per cent would go to theatres regardless of where they are situated, depending in most instances upon where there was a good picture.

Mr. Corinblit: Your Honor, I take it it is stipulated this statement of Mr. Mitchell is just argument based on his statement of what he believes the records shows.

The Court: Yes, it is an argument, but, however, the chart speaks for itself.

Mr. Corinblit: It is the construction of the chart, of course, that is the important thing.

Mr. Mitchell: I believe it was stipulated that—perhaps this is a part of this exhibit—that in answer to the question, “Do you prefer pictures a couple of weeks later, two good pictures same bill with lower admissions,” yes, 498 and no, 35, with some other scattered answers, when you received that information, did that have any bearing on your determination to try your theatre on a 21 day run policy?

The Witness: No, that didn't have anything to do with it. [1929]

Q. (By Mr. Mitchell): You did try your theatre on a 21 day policy commencing early in January?

A. That is correct, on the suggestion of Mr. George Hickey from Metro, Mr. George Smith from Paramount, Mr. Wayne Ball of Columbia Pictures, Mr. George Bowser of Fox West Coast Theatres.

(Testimony of Alex Schreiber.)

Q. And you continued that 21 day policy until some time in March, 1951, is that correct?

A. We did not—

Mr. Corinblit: I object to that question as calling for a conclusion. We have had a definition of what Mr. Mitchell means by the word policy.

The Court: Objection overruled.

Mr. Mitchell: Would you please read the question, Mr. Trainor.

(Question read.)

The Witness: No, that was not correct. That was not a policy.

Q. (By Mr. Mitchell): Well, you continued playing pictures regularly on a 21 day availability until March, 1951, that is correct, isn't it?

A. Well, I would like to answer it my way.

Q. Suppose you answer it yes or no and then explain.

The Court: Can't you answer yes or no?

Mr. Corinblit: Your Honor, the schedule showing the [1930] pictures and the availability is in. Mr. Mitchell spent 15 minutes reading that to the jury yesterday. We don't quarrel with the schedule. It shows there were 21 day pictures played during that period.

Mr. Mitchell: That satisfies me. You answered for him. That's all right. We have no further questions.

The Court: Mr. Johnston?

Mr. Johnston: No questions.

The Court: You may step down.

Mr. Corinblit: Your Honor, there is only one matter. Well, I think the categories speak for themselves. We have completed with Mr. Schreiber, subject only to recalling him for the purpose of damages in the light of the evidence.

Mr. Mitchell: I omitted to offer the schedule which was offered in evidence, your Honor. I would like to do that.

Mr. Corinblit: I will certainly object to that, if your Honor please. This is really pure argument, because the categories have been constructed by Mr. Mitchell.

The Court: Objection overruled. It may be admitted in evidence.

The Clerk: As a Joint Distributors' Exhibit?

Mr. Mitchell: Joint Distributors' Exhibit.

The Clerk: Exhibit T. [1931]

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit T.)

The Court: You may step down.

(Witness withdrawn.)

The Court: Call your next witness.

Mr. Corinblit: The plaintiff will call Mr. Marco Wolff.

MARCO WOLFF

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: You may take the stand. Will you state your name, please?

The Witness: Marco, M-a-r-c-o, Wolff, W-o-l-f-f.

Direct Examination

Q. (By Mr. Corinblit): Mr. Wolff, how long have you been in the theatre business?

A. About 40 years.

Mr. Mitchell: What was that answer?

(Answer read.)

Q. (By Mr. Corinblit): You have been in the theatre business in the Los Angeles area, have you? A. Yes. [1932]

Q. During a period in 1950, were you connected with a corporation known as the Southside Theatre Corporation? A. Yes.

Q. And in that capacity did you have an arrangement whereby you were buying and booking for the Paradise Theatre?

A. Yes, for about ten or twelve weeks.

Q. Ten or twelve weeks in the fall of 1950?

A. Yes.

Q. And that ran from approximately August 23rd, on the opening, through the end of November and perhaps the early part of December?

A. Yes.

Q. Now, prior to that time, Mr. Wolff, had you had a conversation with Mr. Charles Skouras, iden-

(Testimony of Marco Wolff.)

tified as the president of the defendant Fox West Coast, with respect to the Loyola area? A. Yes.

Q. And about when did that conversation take place? A. 1944 or '45.

Q. And who was present at that conversation?

A. I don't recall who else was there beside Mr. Skouras.

Q. And where did the conversation take place?

A. In Mr. Skouras' office.

Q. And will you tell us what was said, please?

Mr. Johnston: Your Honor, I am going to object to that as being too remote to the issues involved in this lawsuit.

The Court: I don't know whether it is or not. It may be or it may not be. The objection is overruled.

Q. (By Mr. Corinblit): Will you tell us what you said and what Mr. Skouras said?

A. I had been approached by a real estate man by the name of Worthington of the Frank Ayers Development Company, which had developed Westchester.

He was trying to sell me the corner of Sepulveda and Manchester Avenue for a theatre. I was especially interested because I had a home that I was trying to dispose of and he manifested some interest in accepting the home on some kind of a trade.

At that time Westchester was very undeveloped. There were wide fields of oats. I went to Mr. Skouras to try to interest him into going into that

(Testimony of Marco Wolff.)

theatre with us because at that time we were in partners with Fox West Coast Theatres in the Fifth Avenue Theatre on the east side of Inglewood.

I thought it was appropriate to offer him the opportunity to go in with us, if he chose to do so, on the west side of Inglewood, as Fox West Coast had a number of theatres in Inglewood, and as a partner I thought it was appropriate to approach him. [1934]

Mr. Skouras stated that he was not interested in that location for a theatre at that time with us and that we should not go in there; that we had gone into the Fifth Avenue situation in Inglewood, and that had been worked out in the partnership arrangement, and that we should not go in the Loyola district,—which became the Loyola district after they built the University there and later the Loyola Theatre was built.

Q. What did he tell you—what else did he say about the Loyola district?

A. At that time he didn't like the district too much. He told me it was a little undeveloped, and that he was not interested in it at that time. However, later on they built the Loyola Theatre as a Fox West Coast Theatre.

The Court: How much later?

The Witness: Perhaps two years.

The Court: There had been quite a lot of development in the meantime?

The Witness: It showed promise and of course it developed very rapidly.

(Testimony of Marco Wolff.)

Q. (By Mr. Corinblit): In that conversation, did you ask him if he objected if you took it for yourself?

Mr. Mitchell: Object to that.

Mr. Johnston: I object to that as leading.

The Court: Sustained. [1935]

Q. (By Mr. Corinblit): What, if anything, did you say—what else did you say to him?

A. I did ask him if he would permit me to go in by myself and he objected to it.

Q. What did he say?

A. Well, he said something to the effect that he objected to my going into the Fifth Avenue district after I had gone into it, although I had had earlier approval to go in there and that had been worked out on a friendly basis later.

He didn't want me to go into that district on the west of Inglewood, so I abandoned it.

Q. Is that all that you recall about the conversation? A. It is.

Q. I will show you, Mr. Wolff, a copy of the transcript in Fanchon & Marco, Inc., versus Paramount Pictures, Inc., at page 437, and ask you to read the question and the answer there at the bottom of the page. And after reading it, I will ask you if that refreshes your recollection concerning anything else that was said at the meeting.

Mr. Johnston: There is no pending question as to which his memory is being refreshed.

Mr. Corinblit: Yes. He stated that he didn't recall anything else concerning the conversation.

(Testimony of Marco Wolff.)

Mr. Johnston: May I see the thing you are showing the witness? [1936]

Mr. Corinblit: Yes. The question and the answer—let me show it to counsel first and then I will return it to you, Mr. Wolff.

Mr. Johnston: Your Honor, I will defer my comments.

The Court: The only question is, does it refresh his memory, and he can answer that “Yes” or “No.”

Mr. Johnston: I submit this is an improper way to refresh the witness’ memory.

This memorandum was not made at the time or anywhere near the time of the conversation. This is testimony given in 1951, six years after the alleged conversation.

Mr. Corinblit: But it is concerning the precise conversation.

Mr. Johnston: My objection is—

The Court: Just a minute. I know it is very difficult to remember conversations after they are four or five years old. A witness may forget something, and anything that recalls the incident or recalls the conversation I think is legitimate.

Mr. Johnston: My understanding of the rule is simply this, that the document which is the refreshing document must have been made at or about the time of the event which is supposed to refresh the witness’ memory.

This transcript was in 1951. The event concerned here is 1945. [1937]



(Testimony of Marco Wolff.)

The Court: Objection is overruled. You may answer the question "Yes" or "No."

Q. (By Mr. Corinblit): Does it refresh your recollection as to something else that was said?

A. Where do you want me to read?

Q. The question beginning at the first word "What" at the bottom of the page, and the answer—just that question and answer.

A. I think I have about answered that.

The Court: The only question is, does it refresh your recollection?

The Witness: Yes.

The Court: If it does, then say "Yes."

The Witness: Yes, sir.

The Court: Let me look at it.

Mr. Corinblit: Yes. It is at the bottom of the page, your Honor.

The Court: It is just exactly the same thing that he testified to. I don't know. He put it in different wording is all. I don't know how it could refresh his memory in any way.

Mr. Corinblit: What we are trying to do is refresh his memory as to the exact words, if that is possible. That is my purpose. If it doesn't that is all there would be to it. The witness stated it does refresh his recollection, and I [1938] need only ask him the question.

Q. What do you recall?

The Court: Now, he already testified as to the conversation that took place. Do you recall any-

(Testimony of Marco Wolff.)

thing more about the conversation that you haven't testified in this case?

The Witness: I think I gave the same general answer now as I did then. The wording was a little differently made.

I did say in that testimony that Skouras——

Mr. Johnston: Wait a minute. I object to what Skouras said.

The Court: You can't testify what you said in that testimony. The only thing you can testify to is what your recollection of the conversation is.

The Witness: It recalls to my mind that the term of "invading the territory" was used and that he objected to my "invading that territory" where the Loyola Theatre later came and he had previously objected to my invading the territory in which we built the Fifth Avenue Theatre and that that had been resolved by a partnership.

The Court: When this conversation took place there was no Loyola Theatre there?

The Witness: That is right, sir.

The Court: It was open territory, was it not?

The Witness: That is right.

The Court: Did he say that he claimed that territory [1939] for Fox?

The Witness: Well, in those days and in subsequent days it was not considered good business to go into opposition with the big circuits.

The Court: Well, by "big circuits"——

The Witness: Without their permission, so I asked for it.

The Court: You had been a friend of Mr. Skou-

(Testimony of Marco Wolff.)

ras for a long time?

The Witness: Yes, sir.

The Court: On friendly relations with him?

The Witness: Yes, sir.

The Court: You were in a partnership deal with him?

The Witness: Yes, sir.

The Court: And you went over and talked to him on a friendly basis?

The Witness: Yes, sir.

The Court: And he advised you not to go into that territory?

The Witness: Yes, sir. [1940]

Mr. Corinblit: Now, your Honor has asked some questions here, without objection by counsel, and I have got to go just a little bit further, since your Honor has asked some questions about this friendly conversation.

The Court: He hasn't indicated anything except he said he was friendly to Mr. Skouras.

Mr. Corinblit: Yes, sir. Personally, I am sure there is no——

The Court: You don't think he knows what friendly means in the motion picture business?

Mr. Corinblit: Yes, I am sure Mr. Wolff knows what friendly means. I am sure he knows what it means. But I think I should ask this question, and your Honor can rule on any objection that is made.

Q. Was the acquisition of the partnership interest by Mr. Skouras in the Fifth Avenue Theatre a friendly matter, Mr. Wolff?

Mr. Johnston: Have you completed the question?

(Testimony of Marco Wolff.)

Mr. Corinblit: Yes.

Mr. Johnston: I am going to object to that as being totally immaterial to the issues involved in this lawsuit.

The Court: Sustained. He has already testified it was a friendly adjudication. That is what he said, I think.

Mr. Corinblit: Well, I think we can refer to a document that is already in evidence. We will go on and come [1941] back to this subject.

Q. Mr. Wolff, subsequently in—I will withdraw that to ask this question on that subject.

Was there a lawsuit filed by your company against Fox West Coast with respect to the acquisition of the Fifth Avenue Theatre in the Inglewood area?

Mr. Johnston: Your Honor, I am going to object to that as being immaterial to the issues involved in this case and, furthermore, being an attempt to impeach the testimony of his own witness, Mr. Wolff here.

The Court: Sustained.

Mr. Corinblit: Your Honor please——

The Court: We are not adjudicating any other theatre except the Paradise and possibly the Loyola Theatre. That's all.

Mr. Corinblit: Yes, sir. I would never have asked the question if your Honor hadn't asked the questions you did. You have asked a question and there is an incorrect inference.

The Court: I didn't ask the—I didn't dictate to

(Testimony of Marco Wolff.)

the witness what he said. I asked if he was friendly to Mr. Skouras and he said he was.

Mr. Corinblit: All right. I will let my question stand. I am not withdrawing my question.

The Court: You can take an exception to the ruling.

Q. (By Mr. Corinblit): Mr. Wolff, in the fall of 1950 [1942] when you were buying and booking for the Paradise Theatre, did you have any negotiations with any of the representatives of the film companies to obtain product for the Paradise Theatre? A. Yes.

Q. And what were the companies with whom you had discussions?

A. Paramount, Warner Bros., Columbia, Metro-Goldwyn-Mayer, and through my bookers with Universal and probably United Artists, RKO.

Q. Turning to Warner Bros., did you have some discussion with Mr. Herbel to obtain pictures for the Paradise? A. Yes.

Q. About when did the conversation take place?

A. A few weeks before the opening of the Paradise Theatre.

Q. Where did it take place?

A. Several conversations took place at his farm and also at my farm, which was close to his.

Q. Was anyone else present other than yourself and Mr. Herbel?

A. Not in the business conversations.

Q. Would you state what you said to him and what he said to you, as best you can recall?

(Testimony of Marco Wolff.)

A. I tried to get first run pictures for the Paradise, told him that since the Loyola had been established as a first [1943] run theatre up the block, a couple of blocks, playing other product, but principally Twentieth Century-Fox, that it would be an opportunity to get film rental for Warner Bros.

But he told me that he could not give us first run.

I then tried to get the next availability, which was 7 days after first run. He did sell us, as I recall, the three pictures to open the theatre with for the first, second and third weeks, first run, 7 days availability.

Subsequently, I had other conversations with him.

He told me that he thought he might be able to get us first run for the Paradise, but later advised us that he was unable to do so.

Q. Other than those three 7 day pictures, Mr. Wolff, you were unable to obtain any Warner pictures on 7 days, is that correct?

Mr. Mitchell: Now, just a minute. That is a leading and suggestive question, trying to put words into the witness' mouth. He was offered the opportunity to bid all through the time, and to put that kind of a question with his own witness is to lead him. I object to the form of the question.

Mr. Corinblit: The record shows that after that there were no other pictures 7 days at the Paradise.

Mr. Mitchell: That isn't quite what the record shows. [1944]

The Court: May I ask the witness a question?

(Testimony of Marco Wolff.)

Do you remember the name of the first Warner pictures you got?

The Witness: I remember one of them, Baby Mine. Tea For Two is the second one, the third one I don't recall at this instant.

The Court: Was Baby Mine a grade A picture? You know what a Grade A picture is.

The Witness: Yes, sir. It is a rare bird, a Grade A picture.

The Court: Was it a Grade A picture?

The Witness: I think we refer to them as a sort of nervous A.

The Court: How about Tea For Two?

The Witness: I think that was a Grade A picture. Maybe the record——

The Court: You wouldn't have any complaint as to the quality of the pictures Warner Bros. gave you on the first three weeks?

The Witness: They were the best ones they had available at the time.

The Court: The best ones they had available?

The Witness: Yes, sir. Maybe it was Three Secrets. Was that a Warner Bros. picture?

Mr. Corinblit: Yes. I think the record will show what the three pictures were. [1945]

The Court: As far as you are concerned, you got from Warner Bros. the best pictures that were available at the time?

The Witness: On a 7 day availability.

The Court: On the 7 day availability.

(Testimony of Marco Wolff.)

The Witness: The first three weeks of the Paradise Theatre's opening.

The Court: All right.

Q. (By Mr. Corinblit): Subsequently did you have a conversation with Mr. Herbel about obtaining additional 7 day pictures for the Paradise, do you recall?

A. Yes, but I was unable to get additional pictures from Warner Bros., as I recall it, either from Warners and several other companies. I did get a couple of them from Columbia—Born Yesterday, which was a big picture, big hit, and did very well at the Paradise, and a James Cagney picture. I think it was called—not Silent Night but it had something to do with the night—Lonely Night.

Q. I will show you, Mr. Wolff, Exhibit 45-J, which is the play-off of the Paradise. I first call your attention to the fact that the picture Born Yesterday played in March 1951. Would that refresh your recollection that that was not a picture that you had anything to do with it?

A. That's right. I just remembered it did well there, and we played it in another theatre. I have the wrong date. [1946]

Q. The play-off you were concerned with runs from August 23, 1950, to November 1950. The Columbia picture on the 7 day availability indicated is the picture In a Lonely Place.

A. In a Lonely Place, yes. [1947]

Q. Now, with respect to Warner's, did you have any conversation with Mr. Herbel with respect to



(Testimony of Marco Wolff.)

the matter of bidding subsequent to the three pictures that you obtained?

A. I don't remember which companies required bidding at the beginning, but later on all companies seemed to require bidding.

Q. And against what theatres were you required to bid?

Mr. Mitchell: That calls for some sort of a conversation or some sort of piece of paper and not a generality. They were different as to different companies.

The Court: When you are talking about you were required to bid, you mean bid for the Paradise?

Mr. Corinblit: Yes.

Q. (By Mr. Corinblit): Mr. Wolff, let us first talk about Warner Bros. I will show you Plaintiff's Exhibit 10-J in evidence which lists the theatres as far as Warner Bros. is concerned, that are included in the bids for the seven-day availability, and I call your attention to the fact that the exhibit refers to the Paradise, United Artists, Fox, La Tijera, Imperial, and Southside.

Now, you were operating the Southside Theatre at that time, were you not? A. Yes.

Q. In bidding for the Paradise Theatre with respect to Warner's, there has been put into evidence exhibits showing [1948] the bids sent from Warner's and what was returned by you.

Now, first I want to show you Exhibit 10-L, which is in evidence——

(Testimony of Marco Wolff.)

Mr. Mitchell: They are the requests for bids sent by Warner Bros.

Mr. Corinblit: Yes. And it has been stipulated in this case, Mr. Wolff, that when the Warner's list came to you they would include the theatres that I have named opposite the term "Clearance", the maximum clearance to be granted for this run shall be, and opposite that "Terms" were included all these theatres, and then when you returned the forms to Warner's on Exhibit 10-L, you struck out every other theatre indicated other than the La Tijera.

Now, you did that with respect to the picture Rocky Mountain, with respect to the picture The Glass Menagerie, with respect to the picture Break Through, and with respect to—I think those are the only—I don't have any others other than the one other bid returned.

Now, I want to show you Plaintiff's Exhibit 10-J. 10-J is a copy from your files of the bid—in our files of the bid with respect to the picture Three Secrets, and I call your attention to the fact that nothing is struck out from the names of the theatres indicated.

I will ask you whether you have a recollection as to the matter of their not having in that one bid return, not having [1949] struck out all of the theatres except the La Tijera.

The Witness: I have no recollection of it, but I would know that it was contrary to our booking

(Testimony of Marco Wolff.)

plan at the time, because we didn't require clearance over these theatres.

Q. (By Mr. Corinblit): You didn't ask for clearance over them?

A. No, and we didn't in any other case, as you pointed out to me, with exception of one theatre, the closest one to the Paradise.

Q. And that is the La Tijera?

A. Yes, sir.

Q. As a matter of fact, you were operating the Southside at that time? A. Yes.

Q. And you never asked the distributors to give you clearance over your own theatre? A. No.

Mr. Mitchell: Objected to as leading and suggestive and also argumentative and contrary to the facts. He did once whether by inadvertence or otherwise.

The Court: I notice it is 11:00 o'clock and we are about to take another recess.

Again, ladies and gentlemen, it is my duty to admonish you not to discuss this case with anyone. You are not to permit anyone to discuss it with you, and you are not to [1950] formulate or express any opinion as to the rights of the parties until the case has finally been submitted to you.

With that admonition we will now recess until 15 minutes after 11:00 o'clock.

(Whereupon, a recess was taken.)

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

(Testimony of Marco Wolff.)

The Court: You may proceed.

Q. (By Mr. Corinblit): Mr. Wolff, turning to the defendant Paramount. There is in evidence the Paramount plan under which bidding set up in the Inglewood-Westchester area prior to your buying and booking for the Paradise Theatre, by which Paramount offered two runs for bidding with the staggered, so-called staggered clearance provided for in the plan.

I don't want to go back over that testimony with you since it has been gone into extensively, Mr. Wolff, but there has also been some evidence with respect to the fact that you were at that time bidding for the Paradise—you were at that time representing the Paradise and the Southside Theatre.

Now, do you recall during this period, Mr. Wolff—I will withdraw that. [1951]

Mr. Corinblit: Let me offer in evidence Plaintiff's Exhibits 2-C and 2-D.

Mr. Mitchell: May I see those.

Mr. Corinblit: Yes. We will offer those in evidence, your Honor.

The Court: They may be received in evidence.

The Clerk: Plaintiff's Exhibits 2-C and 2-D.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 2-C and 2-D.)

Q. (By Mr. Corinblit): There is now in evidence, Mr. Wolff, the bids that you submitted on behalf of the Paradise Theatre on the picture *Sunset Boulevard*, on the picture *Fancy Pants* and on the

(Testimony of Marco Wolff.)

picture Union Station. Do you remember, Mr. Wolff, that with respect to the pictures that were involved while you were representing the Paradise from Paramount, that the Southside didn't play any picture that the Paradise played, and when the Southside played, the Paradise didn't play?

Mr. Mitchell: That is a leading and suggestive question. I object on that ground, your Honor.

Mr. Corinblit: Mr. Mitchell has put in evidence with respect to the play-off of these pictures, and it is just something there should not be a lot of time on. The question is with respect to four pictures, whether they played in the Southside and the Paradise, or whether they [1952] didn't. I can ask Mr. Mitchell to stipulate to the fact, or we can get it in a short manner in this way. There is no argument about the matter.

Mr. Mitchell: I am glad to stipulate with you about the facts if we can get all the facts in and not part of the facts.

Mr. Corinblit: All right.

Mr. Mitchell: What is it you want? Let's get the whole story.

Mr. Corinblit: All right.

Mr. Mitchell: Starting with what period of time?

Mr. Corinblit: Starting with the fall of 1950. We will come back to the picture Sunset Boulevard. A bid was put in by the Paradise. Is that correct?

Mr. Mitchell: That is correct.

Mr. Corinblit: Was a bid put in by the Southside?

(Testimony of Marco Wolff.)

Mr. Mitchell: That is correct.

Mr. Corinblit: And the Paradise and Southside got the picture.

Mr. Mitchell: A bid was put in by the Paradise, Ritz, United Artists, the Academy and the Southside, and the picture was awarded to the Paradise and the Southside.

Mr. Corinblit: Will you start with the picture just before Sunset Boulevard?

Mr. Mitchell: Sure. [1953]

Mr. Corinblit: We will go on then.

Mr. Mitchell: What do you want? The Furies?

Mr. Corinblit: Yes.

Mr. Mitchell: The Furies was offered to the Paradise, Southside, La Tijera, Imperial, Rio, Ritz, Academy, Fifth Avenue, Fox and United Artists. Bids were put in by the La Tijera, Imperial and Fox, and the bid was awarded, one 7 day run to the La Tijera and one at the Imperial. That is correct, isn't it?

Mr. Corinblit: Right. Now we have got Sunset Boulevard.

Mr. Mitchell: That would leave the inference that theretofore there has not been an opportunity given to the Paradise to bid by Paramount.

Mr. Corinblit: I don't mean that.

Mr. Mitchell: I would like to have you stipulate Paramount offered the Paradise an opportunity to bid on Beau Geste and the Bengal Lancers, on Irma Goes West, and on The Lawless, prior to The Furies. Then after Sunset Boulevard——

(Testimony of Marco Wolff.)

Mr. Corinblit: We will go into those in a minute, Mr. Mitchell.

Mr. Mitchell: All right. Is that correct?

Mr. Corinblit: Yes, that is correct. Now, will you stipulate with me that those three pictures all played, I [1954] believe, prior to the opening of the Paradise? Have you got the dates? Not *The Furies*. *The Furies* played after the opening, but the other three, *Beau Geste*, *Lawless*, and *Irma*—you know that *Irma* played before. That was in June 1950.

Mr. Mitchell: Yes. I am not sure how much before. Just a minute and let's see if we can agree. You are correct. *Beau Geste* and *The Bengal Lancers*, *Irma Goes West*, and *The Lawless*, all actually played before the Paradise got open.

Mr. Corinblit: And *The Furies*, you have listed the theatres that were offered bidding and the theatres that did bid?

Mr. Mitchell: Yes. We stipulated that.

Mr. Corinblit: All right. Now, turning to the picture *Sunset Boulevard*, which I think is the next one in order, *Sunset Boulevard*, we have also stipulated there was a bid, and who was awarded the picture.

Mr. Mitchell: That's right. I would like to have you agree the picture was offered to the same group of theatres, and I won't have to repeat them each time, because it is always the same group of theatres, *Paradise*, *Southside*, *La Tijera*, *Imperial*, *Rio*, *Ritz*, *Academy*, *Fifth Avenue*, *Fox* and *United Artists*.

(Testimony of Marco Wolff.)

Mr. Corinblit: On competitive bid.

Mr. Mitchell: On competitive bid for two runs.

Mr. Corinblit: Right. [1955]

Mr. Mitchell: And the bidders on Sunset Boulevard were Paradise, Ritz, United Artists, Academy, and Southside, and the two runs were awarded to the Paradise and Southside.

Mr. Corinblit: Now we will go to the next picture, Fancy Pants. Can you give me the theatres that received a request for bids and the theatres which submitted bids, and the theatres which were awarded the picture?

Mr. Mitchell: The same group received requests for offers. Bids were submitted by Paradise, La Tijera, Ritz, United Artists, Academy, Imperial and Southside, and the picture was awarded to the La Tijera and the Southside.

Mr. Corinblit: All right. I will stipulate to that fact. That was Fancy Pants.

Mr. Mitchell: The next one is Union Station.

Mr. Corinblit: Right, Union Station.

Mr. Mitchell: Requests for bids were submitted to the same group of theatres and bids were submitted by Paradise, La Tijera, Fox, Ritz and Imperial, and the picture was awarded to the La Tijera and the Imperial. Right?

Mr. Corinblit: Right.

Mr. Mitchell: The next picture?

Mr. Corinblit: Well, those are the only pictures that are involved during Marco's period.

Mr. Mitchell: Let's check.



(Testimony of Marco Wolff.)

Mr. Corinblit: I may be incorrect. There may be another [1956] picture that I didn't have the information on, Cassino to Korea.

Mr. Mitchell: We will check it, Mr. Corinblit.

Mr. Corinblit: All right.

Mr. Mitchell: Cassino to Korea played in November. Bids were requested of the same theatres. Bids were submitted to La Tijera and Imperial, and the picture was awarded to the La Tijera and Imperial.

Mr. Corinblit: Right.

Mr. Mitchell: Copper Canyon played December 5.

Mr. Corinblit: I think you have already put in evidence, or you have in evidence the fact that a bid—do you have the theatres that submitted bids there?

Mr. Mitchell: Bids were requested of the same theatres and bids were submitted by La Tijera, United Artists, Academy, Imperial, and Southside, and the bids were awarded to Academy and Southside. Is that correct?

Mr. Corinblit: I will stipulate that subject to any check I have.

Q. Now, Mr. Wolff, the record shows that with respect to a number of pictures that you requested on some pictures clearance over the La Tijera Theatre. In your conversations with any of the film companies represented, the defendants in this case, did you have any discussion with respect to whether or not the Paradise was going to request clearance

(Testimony of Marco Wolff.)

over any [1957] other theatre other than the La Tijera?

A. I don't believe we ever requested clearance over any other theatre except the La Tijera that I recall. [1958]

Q. Now, evidence has been introduced to show that on occasions for some pictures you asked for clearance over the La Tijera.

Now, in 1950 did you have an opinion as to whether or not the Paradise Theatre was in substantial competition with the Southside Theatre, the Academy Theatre, the Fifth Avenue, downtown Inglewood theatres, Imperial, Rio, La Tijera—did you have an opinion on that?

A. On the Paradise?

Q. Yes.           A. Yes.

Q. All right, what was your opinion with respect to the existence of substantial competition between the Paradise Theatre and those theatres?

A. I don't think it existed between the Paradise and those theatres.

The Court: Did it exist between any theatres?

The Witness: I thought it was in partial competition with the La Tijera.

The Court: How about the Loyola?

Mr. Corinblit: I didn't mention the Loyola.

The Witness: He didn't bring that up.

The Court: I said was it in competition with any theatre.

The Witness: All theatres are in competition

(Testimony of Marco Wolff.)

with each [1959] other in the same city. It is simply a matter of degree.

The Loyola Theatre was up the block and played product first run. That product was not available competitively to the Paradise Theatre because they couldn't get first run.

So, I would say the Loyola product was not in competition with the Paradise, although the theatre itself was because some people would naturally make the choice between the first run at the Loyola and a subsequent run at the Paradise and the majority of the choice would naturally go to the first run theatre.

The Court: Then the 7 day availability theatre in your opinion—the only theatre in which the Paradise was in substantial competition was the La Tijera?

The Witness: I didn't say, your Honor, it was in substantial competition with the La Tijera. I think there was a partial competition with the La Tijera. It was the closest theatre.

The Court: How far away was it?

The Witness: I would say a little under two miles.

The Court: If you asked for clearance over the La Tijera, isn't it the same as saying you think the La Tijera is in substantial competition?

The Witness: No, because even a little competition on the same picture might be the difference between profit and loss.

Few theatres make as much as five to ten per

(Testimony of Marco Wolff.)

cent of [1960] their gross, and if the gross was effected five to ten per cent, which is only a minority part of the gross, it could still destroy the profit without being in substantial competition.

As I said before, substantial competition means different things in different situations.

A first run theatre like Warners Beverly or Warners Hollywood running Cinerama——

The Court: You are talking to the jury and not to me. Turn around and talk to the jury.

The Witness: Well, Warners Hollywood has been running, before it changed to its second edition, Cinerama, for nearly three years and it could do that because it had no competition in the entire Southern California area.

It would have been a minor competition if each one of the 20 or 30 districts in the vicinity affected the gross of that theatre only one or two per cent, because if you combined it in the entire area, that would approximate some 40 or 50 per cent of the business that the Warners Hollywood might get. But first run competition is only one form of the competitive problem for a first run theatre, for a first run theatre to run, another form is 7 day availability and another effect is achieved with a 14 day or 21 day availability.

21 day availability has less competition, I would say, in a neighborhood because each individual neighborhood, after [1961] the picture has already been screened in several houses ahead of the 21 day

(Testimony of Marco Wolff.)

availability, it depends then on its immediate surroundings.

Now, on a 7 day availability the La Tijera was in partial competition, I would say, with the Paradise and I asked for the clearance over that particular house and over none other that I recall, because I thought it might affect the gross five per cent which might take all possible profit on a picture.

Q. (By Mr. Corinblit): Mr. Wolff, what was the basis of your opinion that the Paradise was not in substantial competition with the theatres in Inglewood?

Mr. Mitchell: That is not quite a fair question, your Honor, because it assumes a fact that is not in evidence. The witness has just explained what he means by competition, and to say that the La Tijera wasn't in substantial competition forces this witness to answer something that he hasn't said.

The Court: Well, he is changing the term. Instead of "substantial competition" he uses the term "partial competition."

May I ask the witness, does distance have anything to do with the question of competition?

The Witness: Yes, sir.

The Court: And in the day of automobile, distance doesn't mean as much as it did 20 years ago, does it? [1962]

The Witness: That is right.

The Court: How far is the Paradise Theatre from the Eastside Theatre?

The Witness: From the Southside Theatre?

(Testimony of Marco Wolff.)

The Court: Southside Theatre?

The Witness: Eight miles, approximately. They were not in competition at all. We never considered it so. We were always willing to play the Southside together with the Paradise.

The Court: Then as far as that area was concerned, and Inglewood was concerned, seven or eight miles would take a theatre out of substantial competition?

The Witness: Yes, sir. Even four miles would in that area. We played the Southside Theatre weekly with the Academy Theatre and other theatres about four miles from each other.

The Court: Four miles?

The Witness: Yes, sir.

The Court: You think there is no substantial competition between theatres that are four miles apart?

The Witness: On certain neighborhood runs, that is right. It would be different on first run.

The Court: Seven days.

The Witness: Seven days. I would say they are not in substantial competition. [1963]

We proved that by the Southside being a successful theatre playing most of the pictures at the same time the Academy, four miles away, and—a little less than four miles away.

The Court: You didn't find any indication that your gross was affected?

The Witness: I think it would be a better gross if the Academy wasn't there, but we are able to

(Testimony of Marco Wolff.)

show a profit at the Southside with the Academy there and playing at the same time that we do.

The Court: Then, as far as you were concerned, the Southside and the Academy were not in substantial competition?

The Witness: That is right.

The Court: That is four miles. How about three miles or two miles? Is a theatre in substantial competition then?

The Witness: It would depend on the run. I would say they are in less competition on a 21 day run, a little more on a 14 day run and a little more on a 7 day run.

I attempted through the film companies to get a 7 day availability at the Paradise and was willing to play day and date with all of the downtown Inglewood theatres, which was about three and a half to four miles away.

The Court: And they refused upon the ground that the theatres were in competition?

The Witness: Most of the film companies said—no, [1964] it wasn't the film companies alone—Fox West Coast, which wanted clearance at the Academy over the Paradise, so the film companies if they sold to the Academy on that basis had to observe their bid—they couldn't sell the Paradise. If the Academy bought the picture they could sell the Southside because the Academy didn't ask for clearance over the Southside.

Q. (By Mr. Corinblit): And the Southside was closer to the Academy than the Paradise, isn't that

(Testimony of Marco Wolff.)

right? A. A little closer.

Mr. Corinblit: I have no further questions.

The Court: May I ask this witness a question?

Mr. Corinblit: Yes, your Honor. Before you do that, I wonder if I could ask just one question. Pardon me, sir.

The Court: Do you want to know the question I am going to ask?

Mr. Corinblit: No, just this one question.

Q. Mr. Wolff, the court in discussing with you your conversation with Mr. Skouras, asked you—he used the word “friendly.” What did you understand the court to mean by the word “friendly”?

Mr. Mitchell: Now, your Honor, we will object—

Mr. Corinblit: Let me finish my question.

Q. What did you understand by the use of the term “friendly” in your answers to the court’s question? [1965]

A. I thought it was—

Mr. Mitchell: I object to the question on the ground it calls for a conclusion of the witness. The word “friendly” is a well understood word.

The Court: It is like “competition.” Let him give his definition. The objection is overruled.

The Witness: I thought the court was asking me about my personal relations with Mr. Skouras, which were friendly as they are with all mankind.

Mr. Corinblit: And not about your business relations?

The Witness: That is right.



(Testimony of Marco Wolff.)

Mr. Corinblit: No further questions.

The Court: How many weeks were you the booker for the Paradise Theatre?

The Witness: About ten weeks.

The Court: Ten weeks?

The Witness: Yes, sir.

The Court: And at the same time you were the booker for the Southside?

The Witness: Yes, sir.

The Court: All right. Now, in your dealing with the various exhibitors, you were dealing at the same time with the Southside and the Paradise?

The Witness: Yes, sir.

The Court: Was there any difference—did the bookers, [1966] did the distributors act any differently so far as you were concerned when they came to deal with the Southside than they did with the Paradise?

The Witness: Yes, sir.

The Court: They did?

The Witness: Yes, sir.

The Court: How?

The Witness: They couldn't sell me—several of the film companies wouldn't sell me the pictures for the Paradise which they would at the Southside because the Academy and the downtown theatres in Inglewood had demanded clearance over the Paradise.

The Court: That is the only difference?

The Witness: I can't think of any other. I couldn't get the pictures. There was enough differ-

(Testimony of Marco Wolff.)

ence to prevent me getting the pictures for the Paradise in a number of instances.

The Court: That was the reason, the downtown theatres demanded clearance?

The Witness: That is the only reason I can think of at this time. There may have been other reasons, but I can't think of them at this time.

The Court: Very well. [1967]

The Witness: Am I through?

The Court: No, not quite.

#### Cross Examination

Q. (By Mr. Mitchell): Now, Mr. Wolff, you have been in the motion picture exhibition business, you say, for in the neighborhood of 40 years?

A. Yes, sir.

Q. You are the Marco of Fanchon & Marco, correct?

A. Yes, sir.

Q. And your sister is Fanchon?

A. Yes.

Q. And you made famous the Fanchon & Marco stage shows which were used in large theatres throughout the United States, is that true?

A. Well, I don't know if I should qualify as famous, but they were well advertised.

Q. You don't need to be so modest. In 1950 and 1951, when you were buying and booking for the Paradise Theatre, you also operated the Southside Theatre in the southwest Los Angeles area?

A. Yes, sir.

Q. And the Rio?

A. Yes. [1968]

Q. And the Alto?

A. Yes.

(Testimony of Marco Wolff.)

Q. And the Balboa? A. Yes.

Q. And then across the Baldwin Hills you were also operating the Baldwin? A. Yes, sir.

Q. The Baldwin Theatre you have operated from the beginning on a 21 day policy, correct?

A. Almost entirely.

Q. And your Baldwin Theatre is a very successful theatre on that policy, isn't it?

Mr. Corinblit: Object to that, your Honor, as being remote.

The Court: Sustained. I don't know what difference it makes. I think we can stipulate Fanchon & Marco have been very successful in the motion picture business. I don't know.

Mr. Mitchell: You also at that time operated the Paramount Downtown and the Paramount Hollywood Theatre under a franchise from Paramount?

The Witness: Yes.

Q. (By Mr. Mitchell): And you also had interests in a group of theatres in Long Beach?

A. Yes.

Q. And you also had interests in a group of 25 or so [1969] theatres in St. Louis? A. Yes.

Q. You have just said in talking of Cinerama, that you think a first run show case theatre draws patronage from all the metropolitan area.

A. Yes.

Q. Not a great amount from, let us say, Pasadena or Glendale or Westwood or Inglewood or Huntington Park or Belvedere Gardens, but all to-

(Testimony of Marco Wolff.)

gether a substantial patronage from those outlying cities.       A. Yes.

Q. And if a first run were established in each of those outlying cities to play day and date, let us say, with your Paramount Hollywood, it would draw away patronage that you would otherwise get in the Paramount Hollywood?       A. Yes.

Q. You believe that it is a good business practice, both for the distributor and for the first run exhibitor, to have that first run show case exhibitor have clearance over the theatres in the outlying districts?

Mr. Corinblit: Object to that, your Honor, as calling for a conclusion, speculation of the witness, and immaterial to this case.

The Court: I don't know. We have got a man here who, if he is not an expert, I don't know what an expert is in [1970] the motion picture business.

Mr. Corinblit: But we have had testimony on this point before, your Honor.

The Court: Objection overruled.

The Witness: Would you repeat the question, please?

(Question read.)

The Witness: On particular attractions. Sometimes it is better for the distributor if he has first run simultaneously in a lot of situations, because the picture, if it gets known in its first run show case as being an undesirable picture, can't sell so well in the subsequent runs.

(Testimony of Marco Wolff.)

Q. (By Mr. Mitchell): It is easier to fool the public, you mean, all at once?

A. All at once, speaking from the distributors' viewpoint.

Q. But on good pictures, it is good business to play it in a show case and have clearance over the outlying area, isn't it?

Mr. Corinblit: Your Honor, from the point of view of a distributor, I don't know how the witness could testify. Actually, of course, if one theatre has a big first run house, he would want clearance, but from the point of view of the distributor, I don't think the witness could answer.

The Court: Is that an objection? [1971]

Mr. Corinblit: Yes.

The Court: Objection overruled.

The Witness: I thought the question was about both distributor and exhibitor.

Mr. Mitchell: Would you read the last question, please?

(Question read.)

The Witness: Yes. It helps to advertise it for the outlying areas later. The first house that plays it alone has the edge that Cinerama has.

Q. (By Mr. Mitchell): And that returns a large film revenue to the distributor, doesn't it?

A. Yes. That is what we are returning at the Paramount Hollywood.

Q. Then a successful picture in the Paramount Hollywood means that the exhibitor in the subsequent runs, including your 21 day run at the Bald-

(Testimony of Marco Wolff.)

win, gets the advantage of the fame of the picture that has been established?

A. There is a definite advantage, yes.

Q. It is a definite advantage?

A. I would say so.

Q. You concede, do you not, Mr. Wolff, that the distributor has the right to determine how many subsequent runs he will offer in an area?

Mr. Corinblit: Object to that, your Honor, as calling [1972] for a conclusion, a concession as to a right, which is a question of law. It is a conclusion. I will object to that. It has nothing to do with expertise or expertness.

The Court: Overruled.

The Witness: I think the picture belongs to the distributor and as long as he treats everyone equally, I would say yes to that question.

Q. (By Mr. Mitchell): In this Inglewood area, let's assume a distributor who only wishes to license one run in this whole area from the Southside on the west to the Paradise on the east,—do you understand what we have called the Inglewood-Westchester area in this trial? Do you understand the area I am talking about? A. Yes.

Q. If that one picture played in the United Artists Theatre downtown in Inglewood, let us say, wouldn't it draw patronage from all parts—I think I gave you the wrong directions there. I guess the Southside is on the east and the Paradise is on the west. But wouldn't the United Artists playing ex-

(Testimony of Marco Wolff.)

clusive 7 day run draw patronage from over to the area of the Southside?

A. In a small degree, yes. It is quite a distance.

The Court: Are you talking about the United Artists in Inglewood?

Mr. Mitchell: Yes, sir. [1973]

The Court: All right.

The Witness: I would say there would be some patronage from the Southside district in a lessening degree as you go to the widest radius.

Q. (By Mr. Mitchell): There is really over in the Southside area quite a population center, isn't there, Mr. Wolff? A. Yes.

Q. Very much more of a population center than there is in the Westchester area?

A. No. I think the Westchester area is bigger, better.

Q. Back in 1950 and 1951 we are talking about.

A. Well, Westchester was pretty well developed by then, but I couldn't give you an accurate estimate.

Q. All right. The United Artists playing exclusive 7 day run would draw some from the Southside area and it would draw some from up in this Balboa Theatre area, wouldn't it?

A. Again only a small percentage from there.

Q. Around the circumference here it would draw some from the area up here to the northwest of Inglewood, wouldn't it, or northeast of Inglewood, I should say?

A. Again the same answer would be that I ear-

(Testimony of Marco Wolff.)

lier gave, that as the radius widened, it would be lesser. For instance, the Southside area, even if it had to follow the United Artists in downtown Inglewood; would still find many of its patrons waiting for the picture to get there. [1974]

Q. True, and some of them would already, in order to see the picture early, have gone to the United Artists?

A. I think a few, because the Southside is quite remote from downtown Inglewood.

Q. Just like when you run the exclusive first run in the Paramount Hollywood, it just draws a few people from Pasadena, a few people from Inglewood, a few people from other areas, isn't that right?

A. That's right.

Q. In the same manner, the exclusive first run in Inglewood would draw some people from the Southside area?

A. Some people.

Q. And some people from up in the northwest?

A. Yes.

Q. And some people from the Westchester area?

A. Yes.

Q. And some people down here toward Redondo, isn't that right?

A. That is possible, and likely.

Q. And likely, isn't it?

A. Yes.

Q. And is so, isn't it?

A. I think so.

Q. The accumulation of all these people drawn from all these areas is important in terms of revenue to the United [1975] Artists playing exclusive 7 day run, isn't that true?



(Testimony of Marco Wolff.)

A. Yes, although he would get more film rental if he played it simultaneously in several houses as the film companies have chosen to do.

Q. The film companies get more film rental on that one run if they play it in a lot of theatres, but they can also get more film rental from playing an exclusive 7 day run in the United Artists and then playing subsequent runs in the surrounding theatres? That is another way of doing it, isn't it?

A. Yes. I can't testify to that being a fact in that area. As long back as I remember they have never played one run as a matter of policy in the Inglewood area as widely as you refer to it, because there have always been several runs within my recollection.

Q. You know a man named George Hickey, don't you?           A. Yes.

Q. Back in those days he was only playing one 7 day run in that area, wasn't he?

A. Not always.

Q. Well, you remember you were receiving pictures at the Southside back in those days no earlier than 21 days from Loew's, don't you remember that?

A. I remember our opening program was a 7 day availability from MGM. [1976]

Q. But your regular run of pictures was 21 days from Loew's, wasn't it?           A. And 14, I think.

Q. And 14?           A. I am not sure, but I think.

Q. They ran one 7 day availability?

(Testimony of Marco Wolff.)

A. I think Loew's had a different policy than several of the other companies.

Q. I think so, too. That is correct. Similarly, Mr. Wolff, if a company were to offer a single 7 day availability in this area and it were to play at the Southside Theatre, your theatre would draw patronage from all of this area to the west over to the Paradise, and from far to the east, isn't that true?

A. If it had an exclusive run for the entire area?

Q. Yes.

A. Yes, and the outer fringes, of course, in a lessening degree.

Q. Yes, and that is so in really a complete circle around the Southside?

A. That's right. [1977]

Q. So that the area of draw of patronage is affected by the question of whether there is one run, one seven-day run or two?

A. In varying degrees you are right, but it does affect it.

Q. Well, it affects it when your Southside, if it were deprived of the draw of all these outlying areas, that would be a considerable loss of gross, wouldn't it?

A. Yes, but we never had the privilege——

Q. Of losing that much gross?

A. Yes, but we never had the privilege of having the Southside on a seven-day availability without other theatres within four miles playing the

(Testimony of Marco Wolff.)

same picture at the same time. So I couldn't give you expert testimony on the result.

Q. All right. When a company puts in two seven-day runs in the area, the area of draw of patronage becomes a smaller circle, shall we say?

A. For each theatre.

Q. For each theatre.

A. It contracts it a little, depending on the proximity of the second theatre.

Q. That is right. Well, it really depends on a lot of things. It depends on the geography of the situation, doesn't it? A. Yes. [1978]

Q. And the theatre going habits of the public in the area? A. Yes.

Q. The question of whether a theatre is or is not in a city like that that has a business center.

A. (No response.)

Q. Would that have some effect on it?

A. Under certain circumstances, although some of the best theatres now are in the middle of an oil-field with no city around them, and they are doing bigger grosses than theatres in the middle of the business section.

Q. Like Baldwin Hills?

A. Or like the Vermont Drive-In.

Again I have to say that none of these are fast rules, because they differ under varying circumstances.

Q. All right. So if there were two seven-day runs being offered and one went to the Southside and one went to the Academy each of those would draw from

(Testimony of Marco Wolff.)

a large surrounding area—the circles would cross, wouldn't they?      A. Yes, they would.

Q. The area wouldn't be as large as if there were a single exclusive seven-day run?

A. That is right.

Q. Now then, if you put in three seven-day runs—let us suppose a distributor were to license one seven-day run to [1979] the Southside, one seven-day run to the Academy, and one seven-day run to the Paradise, that would still further constrict these circles of draw, wouldn't it?

A. Depending on the circumstances, you are correct, although an outstanding picture would pack all three theatres.

Q. Yes, but there not too many outstanding pictures each year, are there, sir?

A. That is right.

Q. And you have to depend for your livelihood and the livelihood of your theatre upon the best pictures that the distributors can make, but not all of them are knock-outs, right?

A. I will concede that.

Q. All right. Now, as you put in additional—as the distributors put in additional runs what he is doing is dividing up to some extent the patronage of this large area among those runs?

A. Yes, although, of course, he would get a larger gross and therefore larger film rental out of the three simultaneous runs than he would out of two or one.

Q. If he put in—let us go to an extreme. There

(Testimony of Marco Wolff.)

are some nine theatres in this area exclusive of drive-ins.

If he were to put in a seven-day run in every one of those nine theatres he would just divide up the patronage among the theatres? [1980]

A. Each theatre would do less than if they had it alone, if that is what you mean.

Q. The distributor might get the same amount of money as he would in an exclusive run, right?

A. Or more.

Q. Or more. But the theatres would be badly hurt by that sort of thing, wouldn't they, nine simultaneous runs?

A. Nine seven-day runs in a contracted area, yes.

Q. So that the more runs you put in this area the less the theatres, the less well the theatres can do, isn't that really so?

A. I think so. [1981]

\* \* \* \* \*

Q. (By Mr. Mitchell): Mr. Wolff, Warner Bros., through your negotiations with Mr. Herbel, licensed to you three pictures early in your operation of the Paradise. *Pretty Baby*, *Kiss Tomorrow Goodbye*, and *Tea For Two*; that's right, isn't it?

A. Yes.

Q. You didn't bid for those, you carried on a negotiation with Mr. Herbel?

A. Yes, with the exception of *Tea For Two*, I think he demanded a guarantee.

Q. Yes. Well, that is a negotiation, isn't it? I

(Testimony of Marco Wolff.)

mean whether you give a guarantee or don't give a guarantee is [1982] negotiation, isn't it?

A. Yes.

Q. And you negotiated, as distinguished from what you call bidding? A. Yes.

Q. Now, on the other Warner pictures that came off on the 7 day availability while you were operating the theatre, Warners offered you the opportunity to bid on *Breaking Point*—or would you like to have your recollection refreshed on that?

A. Well, I don't remember the individual pictures.

Mr. Corinblit: We don't have any quarrel with the fact that the pictures during the period Mr. Wolff was buying for the *Paradise Theatre* were offered for bidding.

Mr. Mitchell: All right. What I would like to have stipulated to, then, is that Warner offered to the *Paradise* for bidding the 7 day run on *Breaking Point*, *Three Secrets*, *Rocky Mountain*, *Glass Menagerie*, *Breakthrough*, and *West Point Story*.

Mr. Corinblit: And all of those played prior—

Mr. Mitchell: No, but they were offered during the time that Mr. Wolff was operating the theatre.

Mr. Corinblit: All right. We will stipulate to that, subject to correction as far as the last date.

Q. (By Mr. Mitchell): Now, those pictures that I have [1983] just named that were offered to *Paradise* on the 7 day availability, you did not win the bid on those pictures?

(Testimony of Marco Wolff.)

A. I think we did on Three Secrets.

Q. You think you played Three Secrets?

A. I think so.

Q. With respect to the other pictures, you played them on the 14 day availability, didn't you?

A. I don't remember that.

Q. I think I can refresh your recollection on that if I may have Plaintiff's Exhibit 45-J.

A. I am not sure we played Three Secrets on 7 or 14, I don't know which.

Q. I think you played all of those and I will refresh your recollection in a minute, on the 14 day availability, Mr. Wolff.

This exhibit, Mr. Wolff, is in evidence as the Paradise play-off of pictures, and I think if you will check, perhaps your recollection can be re-refreshed that starting with Breaking Point—well, let's come back to that in a minute—Three Secrets you played on the 14 day availability.

A. Yes, according to this schedule.

Q. You recall that? You recall playing it at the Paradise?

A. I recall playing Three Secrets, yes, sir.

Q. And Rocky Mountain on the 14 day. [1984]

A. Yes, sir.

Q. Glass Menagerie on the 14 day?

A. I think that was after we gave up the booking of the theatre.

Q. That played November 22nd to 28th. I think you were still there, weren't you?

(Testimony of Marco Wolff.)

A. I think we finished the first or second week in November. It is indicated on here, I think, where the cut-off came. I thought—we may have booked up to there, but I am sure we didn't officially have anything to say about the theatre beyond the first week of November.

Q. I see. All right. You were also given an opportunity during the period that you were operating or buying and booking for the Paradise to bid for the Metro 7 day pictures and the Universal 7 day pictures, isn't that true, also? Would you like to——

A. I am not sure about Metro 7 days.

Q. Perhaps I can refresh your recollection. How about Universal? Do you remember you received an opportunity——

A. I think we had the opportunity there, yes, sir.

Q. ——to bid on those pictures?

A. Yes, sir. [1985]

The Court: While you were buying and booking for the Paradise Theatre did you bid or did you refuse to bid?

The Witness: Whenever possible we tried to negotiate, but there were several occasions where we did bid.

The Court: You would rather negotiate than bid?

The Witness: Yes, sir.

The Court: If you couldn't negotiate, then you did bid?



(Testimony of Marco Wolff.)

The Witness: We made a number of bids.

The Court: You never refused to bid?

The Witness: We refrained from bidding on a number of pictures.

The Court: That is, you didn't want to put in a bid, but you never established the policy you wouldn't bid at all, did you?

The Witness: No, sir.

Mr. Corinblit: The plaintiff will stipulate that for the most part, and we don't know of any exceptions, the Metro product was offered for bidding on a seven-day availability to the Paradise.

We had previously told Metro we wanted to negotiate and they refused and requests for offers were sent.

Mr. Mitchell: Requests for offers were sent during the period Mr. Wolff bought and booked.

Mr. Corinblit: We will stipulate that that is substantially true. [1986]

Mr. Mitchell: We will accept the stipulation.

Q. (By Mr. Mitchell): Now, Mr. Wolff, during the period 1950 when you were representing the Paradise Theatre, the main east and west arterial street in the vicinity of the Paradise Theatre was Manchester Boulevard, is that correct?

A. Yes.

Mr. Mitchell: I would like to point that out to the jury.

Q. (By Mr. Mitchell): The Paradise Theatre is located here on Sepulveda and Manchester Boule-

(Testimony of Marco Wolff.)

vard runs from Sepulveda easterly through Inglewood out past the Academy and Fifth Avenue Theatre, which are both fronting on Manchester and so on.

By the way, I see out here at Broadway and Manchester there is a theatre called "Manchester Theatre." That is one you operated also, was it not?

A. Yes, sir.

Q. I think that wasn't mentioned this morning.

Now, in addition to the Academy and the Fifth Avenue being located on Manchester, the Fox in Inglewood and the United Artists were both within a block or two of Manchester Boulevard.

A. That is correct.

Q. And the ease of transportation between the Westchester area where the Paradise is located, and downtown [1987] Inglewood and the Academy and Fifth Avenue would be a factor in tending to increase the degree of competition between theatres in the Westchester area and theatres in downtown Inglewood and the Academy and Fifth Avenue, isn't that correct?

A. Yes.

Mr. Mitchell: That is all.

Mr. Johnston: I have no questions of this witness.

#### Redirect Examination

Q. (By Mr. Corinblit): In the last questions of Mr. Wolff I don't think Mr. Mitchell asked you where the United Artists Theatre is located—what street in Inglewood is it located on?

(Testimony of Marco Wolff.)

A. On Market Street.

Q. Inglewood? A. Inglewood, yes.

Q. Is there a cemetery anywhere in that area?

A. The cemetery is beyond Inglewood, between Inglewood and the Academy Theatre and the Fifth Avenue.

Q. How about the other direction? Is there a cemetery or some other wide-open space between downtown Inglewood and coming toward Sepulveda?

A. There was at that time a large undeveloped area.

Q. Between Inglewood and coming toward Sepulveda? [1988] A. That is right.

Q. Is there a railroad track in that area, too?

A. Yes.

Q. Between Inglewood and coming back toward Sepulveda? A. Yes.

Q. Mr. Mitchell asked you a little bit about first run, Mr. Wolff.

The Court: First run?

Mr. Corinblit: First run Los Angeles. There were questions asked about first run Los Angeles, your Honor, general policy questions.

Q. You are aware, are you not, Mr. Wolff, that in the last two or three years all of the distributors have adopted the multiple day and date policy, is that correct?

Mr. Mitchell: That is a leading question and it

(Testimony of Marco Wolff.)

isn't quite correct and I think the witness—anyway, it is not proper cross examination.

The Court: I think it is proper examination. You opened up the subject. The objection is overruled.

The Witness: Yes, I believe all the distributors are playing the majority of their pictures now on a multiple policy of first run, sometimes from 10 to 20 first run day and date.

Q. (By Mr. Corinblit): Now, having in mind the total number of pictures distributed—I will withdraw that. [1989]

Having in mind the total number of pictures that are sold on the multiple day and date first run policy, as far as the distributors are concerned, is it what you would say—what would you say as to most of the product, as to whether it is good business to play on a multiple day and date as compared with playing an individual house first?

A. Well, the distributors often tell me how much money they can get on a day and date when I tried to get it for an exclusive run. [1990]

Q. (By Mr. Corinblit): You have an example of that now—

The Court: Does he tell you how much he can get if he wants multiple runs?

The Witness: That is what he tells me, he can get a lot more money on a multiple run.

The Court: Does he tell you he can a lot more money on a exclusive run sometimes?

(Testimony of Marco Wolff.)

The Witness: When we are able to get exclusive, it is because they are satisfied that particular picture is worthy of that kind of run and it will have a long run in our Paramount Hollywood Theatre.

Q. (By Mr. Corinblit): If you were to talk in terms of percentage on the matter of exclusive runs compared to the multiple day and date runs, that would be what percentage that would be applicable to the multiple day and date?

A. You mean how many pictures play multiple as against those that play exclusive?

Q. Yes.

Mr. Mitchell: What is the basis for this? There are four defendants in this action, your Honor, and Twentieth Century-Fox, five distributor defendants. Four I represent and one is represented by Mr. Johnston. Now there is a broad general question which I object to.

The Court: What are you trying to [1991] establish, Mr. Corinblit?

Mr. Corinblit: Trying to establish, your Honor, between 90 and 95 per cent of the pictures are multiple day and date pictures, and the only exclusive situation—

The Court: You mean now?

Mr. Corinblit: Yes, sir.

The Court: 1956, or—

Mr. Corinblit: First I will establish now and then we will establish it was a fact that back in 1950 and 1951 the same was true as far as exclusive.

(Testimony of Marco Wolff.)

The Court: Maybe counsel will agree with you.

Mr. Corinblit: Fine.

The Court: That it is the policy of the distributors now to distribute their pictures on multiple runs, rather than single run, the policy for general pictures.

Mr. Corinblit: Yes, sir.

The Court: Won't you stipulate that?

Mr. Mitchell: That is not true, your Honor. The distributors' policies are different with respect to first run now and you can't generalize. There are a great many multiple first runs shown by some of the distributors, and some, like Paramount, show *hardly* of their pictures on multiple first run, so you just can't generalize. Each distributor sells his type of picture in the way he thinks best. [1992]

The Court: I will sustain the objection. You reduce it to each distributor, then, rather than lumping them all together.

Mr. Corinblit: Well, your Honor, we have read into evidence from 1950 and '51 the number of pictures that played on multiple day and date policy, so I think if Mr. Mitchell wants to break it down, I have already done it with the specific pictures, so it is not necessary to break it down with this witness.

Q. Mr. Wolff, looking back at 1950-1951 and prior thereto, let's say 1945 to 1951, none of the companies, except with rare exceptions as to pic-

(Testimony of Marco Wolff.)

tures, had in effect any exclusive first run policy, isn't that correct?

Mr. Mitchell: Your Honor, this sounds like cross examination. This is his own witness. He is cross examining him. The questions are leading and suggestive. He should be required to ask proper questions. I object on that ground.

Mr. Corinblit: I will withdraw the question.

Q. Mr. Wolff, do you remember what was the situation with respect to the single theatre long run exclusive policy back in 1950 and 1951?

Mr. Mitchell: With respect to what distributor, your Honor?

Mr. Corinblit: With respect to any exhibitor in the Los Angeles area first run. [1993]

The Court: Mr. Corinblit, unless you assume that all the distributors had an agreement among themselves in which they followed the same policy, then your question is too broad, because I think the evidence is that the distributors had different policies.

Mr. Corinblit: Not with respect to this question of an exclusive run, your Honor. As a matter of fact, that question——

The Court: Didn't Fox back in those days have a multiple run?

Mr. Corinblit: Yes, sir.

The Court: You included all the companies.

Mr. Corinblit: Yes.

Mr. Mitchell. So did Universal, your Honor.

The Court: If you want to break it down into

(Testimony of Marco Wolff.)

the particular companies, you can do that, because I think the companies contend, and I think there is some evidence to sustain their contention, that they didn't follow the same policy, that each had an individual policy.

Mr. Corinblit: With respect to this question, your Honor, as to having exclusive, one theatre exclusive, you will not find, your Honor, any company using that policy.

The Court: Well, ask the witness about the individual companies, rather than putting them all in the same basket. [1994]

Mr. Corinblit: Fine.

Q. With respect to Loew's, Mr. Wolff, do you remember back in 1950 and 1951, did Loew's have the policy of exclusive first run? A. No.

Q. With respect to Paramount, do you remember back in 1950 and 1951 that Paramount had the policy of exclusive first run? A. No.

Q. With respect to Twentieth Century-Fox, did Twentieth Century-Fox have a policy of exclusive first run? A. No.

Q. With respect to Universal, did Universal have the policy of exclusive first run in 1950 and 1951? A. No.

Q. With respect to RKO, did RKO have a policy of exclusive first run? A. No.

Q. With respect to Warner, did Warner have a policy of exclusive first run in 1950 and 1951?

A. No.



(Testimony of Marco Wolff.)

Q. With respect to Columbia, did Columbia have a policy of exclusive first run? A. No.

Q. With respect to United Artists, did United Artists [1995] have a policy of exclusive first run?

A. No.

Mr. Mitchell: Now, your Honor——

The Witness: May I modify this answer with this statement?

Mr. Corinblit: Yes.

The Witness: Occasionally there was an unusual picture, a Ten Commandments of that day, that might have a long run at the Carthay Circle, or a theatre of that type, an occasional picture, once in a great while.

Mr. Corinblit: That is the kind of picture described by Mr. Hickey as the problem picture, your Honor.

Mr. Mitchell: That is no problem picture. There is no problem about The Ten Commandments.

The Court: May I ask this witness a question?

Will you please explain to the jury what you mean by an exclusive first run in 1945 to 1951? What do you mean?

The Witness: My answer was to the question, was there an exclusive first run, and it was based on my understanding of one picture in one theatre only at the same time with no other theatre.

Mr. Mitchell: Over what kind of a period?

The Witness: Over a long run period, many weeks or several months. Of course, many years

(Testimony of Marco Wolff.)

ago, you might recall that the Egyptian had pictures which ran six or eight [1996] or 10 months, and for a time there were one or two other theatres that had what is called an exclusive first run, but in 1950 and 1951, as I recall, it was not the policy of any company. There may have been an occasional picture which I can't place at this moment.

Mr. Mitchell: Your Honor, I think that there is confusion here that might just as well be cleared up because there is no dispute. A policy of playing downtown and Hollywood day and date has never been called multiple first run policy that I ever heard of. When counsel asks those questions the way he does, he tends to infer that in those days there was not this show case policy, which is completely contrary to the fact. I think it would be well to clear it up right now. There were multiple first runs used by Twentieth Century-Fox and Universal, and others used two and three theatres in downtown and Hollywood.

The Court: Let me ask the witness a question. You operated the Paramount Downtown and the Paramount in Hollywood.

The Witness: Yes, sir.

The Court: Played day and date.

The Witness: Yes, sir.

The Court: Did you consider that a multiple first run?

The Witness: I consider that is a dual [1997] first run, but in answer to his question, there was

(Testimony of Marco Wolff.)

no first run exclusive at that time that I knew of in one theatre.

The Court: If you had the right to play Paramount pictures in downtown Los Angeles and Hollywood, wasn't that exclusive first run for those theatres?

The Witness: We had thought so, but I think in your court it was decided it was not exclusive.

The Court: You contended it was exclusive.

The Witness: I don't think we contended it in the courts, your Honor, but we thought it was, but they took pictures away from us and we didn't have an exclusive in those two theatres.

The Court: You played the pictures in downtown and in Hollywood.

The Witness: One downtown Los Angeles and one in Hollywood.

The Court: Would you consider that a first run?

The Witness: In those two theatres, yes.

The Court: Was it a dual first run?

The Witness: It was in those two theatres.

The Court: In two theatres.

The Witness: Yes, sir.

The Court: You just got through testifying not one of the exhibitors had such a policy.

Mr. Corinblit: Oh, no, your Honor. [1998]

The Witness: I was referring to one exclusive theatre.

The Court: One theatre?

The Witness: When you asked me to define it

(Testimony of Marco Wolff.)

to the jury, that is the way I attempted to define it. The answer to the question that I gave was intended to answer the question referring to was there one theatre playing pictures from any company exclusively in one theatre with no other theatres playing day and date with it. My answer is no to that.

Q. (By Mr. Corinblit): There is another part, too, Mr. Wolff. In Mr. Mitchell's definition of first run when he was asking the questions, he was talking about a long period. There was no company except with rare exceptions that had that policy in 1950 and 1951, is that right?

A. That is my answer.

Mr. Mitchell: Can't we have a proper question asked by counsel? He makes a statement and then turns around and asks a leading question so that the witness knows what to answer.

The Court: Maybe that is a sign of a good attorney.

Mr. Mitchell: I think that is overreaching. I think it should be stopped.

Mr. Corinblit: I object to Mr. Mitchell's statement that there is any overreaching here. [1999] It is Mr. Mitchell that used the language without their getting a definition in advance.

The Court: Just a minute.

Mr. Corinblit, you are going too far, and this witness, you know, is an expert witness.

Mr. Corinblit: Yes, sir.

(Testimony of Marco Wolff.)

The Court: He is perfectly capable of understanding your questions and answering them. [2000]

Q. (By Mr. Corinblit): Now, Mr. Wolff, referring to Mr. Mitchell's example of the seven-day period, Mr. Mitchell asked the question with respect to the seven-day availability at United Artists Theatre in Inglewood, and if this is deemed to represent the United Artists Theatre in Inglewood, Mr. Mitchell drew a circle of the drawing area and pointed out that there were—that it would draw a certain amount from each peripheral area.

Now, if a theatre—if instead of selling one exclusive run to United Artists the company put another run in this area, what in your opinion would happen to the total drawing area of seven-day availability in the two theatres?

A. Well, the drawing area would be increased at least by 50 per cent.

Q. In other words, instead of the drawing area—you would say it would at least be——

A. Maybe three-quarters.

Q. Right, or maybe three-quarters, and if the same thing happened on this end the same thing would be true, is that right? A. Yes, sir.

Q. The drawing area would be out three-quarters. A. Yes, sir.

Q. So the total drawing area is now represented by the larger circle for seven days as distinguished from the [2001] smaller circle?

A. Yes, sir.

(Testimony of Marco Wolff.)

Q. And what effect does that have on the film company—what the film company is going to get?

A. It wouldn't multiply it by 3, but it would approximate between  $2\frac{1}{2}$  or  $2\frac{3}{4}$ .

Q. Suppose, for example—in other words, if the gross of the first theatre on the exclusive run was \$4,000 and the film rental paid on a basis of \$4,000, with three runs the gross would be what, taking your example?

A. Well, I would roughly expect it to be not less than \$10,000 on a good picture. If it was a super picture it could be three times \$4,000.

Q. Now, the same analysis that you have made here applies even to, in many respects, to the first run, does it not?

Mr. Mitchell: I object to the question as leading and suggestive. It is the same thing.

Mr. Corinblit: I will withdraw the question.

Q. In terms of the gross receipts that the film companies receive for first run on a multiple day and date as compared—on 90 to 95 per cent of the pictures, as compared to some of the few other pictures that are played exclusively, do you have any information as to what the comparisons of gross receipts— [2002]

Mr. Johnston: I object to that. There has been no foundation laid, your Honor, and it calls for conclusions and speculation of the witness.

The Court: I will sustain the objection. [2003]

\* \* \* \* \*

(Testimony of Marco Wolff.)

Mr. Corinblit: Yes, that is correct.

Q. (By Mr. Corinblit): One other question, Mr. Wolff.

It has been shown in this case that on occasion the Southside Theatre in part of its advertising would have the word “play” or “come early”—the Southside Theatre or the Rio Theatre. What did those terms mean when used in advertising?

Mr. Mitchell: I object to that as being improper redirect examination.

The Court: Sustained. There wasn't one word about that in the direct examination.

Mr. Corinblit: All right. Mr. Mitchell doesn't want that information. There are no further questions.

Mr. Mitchell: That isn't quite proper, your Honor. That is overreaching.

The Court: Yes, and the jury is instructed to disregard the statement of counsel.

Mr. Mitchell: And it shouldn't have been said, should it, your Honor?

The Court: I ruled it out, Mr. Mitchell.

Mr. Mitchell: I want to ask this witness [2007] a few questions about his circles.

#### Recross Examination

Q. (By Mr. Mitchell): Now, Mr. Wolff, Mr. Corinblit had you talk about three theatres. I believe he called this the United Artists. I don't know whether he gave this a name, but let us give

(Testimony of Marco Wolff.)

it the name of the Paradise. It is over this way, isn't it, over to the west? A. (No response.)

Q. Here is the United Artists and the Paradise over here this way, and let us call this the Academy over here.

Now, you say that playing alone the drawing area of the United Artists Theatre would be the circle with the United Artists at the center of it.

A. That is the immediate playing area.

Q. The immediate drawing area.

A. Yes.

Q. You don't mean "playing area". You mean "drawing area". A. That is what I mean, yes.

Q. They also draw from farther out, do they not? A. That is right.

Q. Of course? A. Yes. [2008]

Q. And then if you add two more seven-day runs, one to the Paradise and one to the Academy, then the drawing area of the Paradise becomes the principal drawing area, becomes a circle around the Paradise, is that right?

A. That is right. I don't think it would include the United Artists, though, in that particular circle.

Mr. Corinblit: Because the board is too small.

Mr. Mitchell: You would have to have the circle a lot smaller.

The Witness: That is right. Those are not good drawings.

Q. (By Mr. Mitchell): I am just taking the drawings the way he has them.

And your Academy—in fact, I am cutting them



(Testimony of Marco Wolff.)

down a little bit. Your Academy would draw in this direction, wouldn't it?

A. Yes. Likewise that shouldn't include the United Artists.

Q. Well, how far over do you think—let us draw a new set of circles your way. How far over do you think—we will make them a little smaller so we won't have any trouble. Here is your Paradise and here is your Academy. How far over do you think they would draw?

A. Well, the distance between the Academy and the Paradise is about six miles, isn't it? [2009]

Q. But this morning, Mr. Wolff, you told me that the United Artists playing alone would draw from a very large area, isn't that right?

A. Of course, but increasingly less as the circle widened, but I would divide it—if you want me to help you with your geometry there.

Q. What you are saying now is that each one would be a circle about like that?

A. Say about halfway between.

Q. Now, what you have done is to take the United Artists drawing area on a single seven-day run and divide it into these three parts.

Mr. Corinblit: Oh, no, no.

Q. (By Mr. Mitchell): Isn't that true?

A. Are you designating the outward area as the Academy?

Q. Yes.

A. To my recollection they never would play the Academy with downtown Inglewood.

(Testimony of Marco Wolff.)

Q. You mean playing clearance over downtown Inglewood? A. Usually.

Q. That means that somebody thought that downtown Inglewood drew from the Academy, drew from the Academy customers and the Academy drew Inglewood customers. [2010]

A. Less than two miles apart, but they would let us play at the Southside or let the Imperial play it, which was farther away than downtown Inglewood, four or five or six miles.

Q. What I am getting at is this. When you put in three day and date runs, while you increase to some extent the drawing area, you also cut up the patronage, don't you?

A. In a very small degree, because I can give you actual figures on that.

Q. And split it among the three theatres, right?

A. The split is, peculiarly enough, only very small because we had the experience of knowing—take *Born Yesterday* which played the Southside, the La Tijera and the Imperial and the Paradise and did well in all of them. That was four and not three. And some of those theatres were two miles apart.

Q. What do you think is a good gross in the Southside on a topnotch picture like *Born Yesterday* per week?

Mr. Corinblit: I object to the question. It is improper recross. That matter wasn't gone into. The plaintiff was restricted, and I object to it on that ground.

(Testimony of Marco Wolff.)

The Court: He is trying to find out what the witness meant by these circles. I assume that is what it is for, is that right?

Mr. Mitchell: Yes. [2011]

The Court: Overruled.

The Witness: We would be satisfied with \$4000 for the first week.

Q. (By Mr. Mitchell): Satisfied with that amount for an absolutely topnotch picture like that?

A. For a first week. I think that picture probably did a little more than that—probably \$4500.

Q. What do you really think you should get for the first two weeks for a topnotch picture like that?

Mr. Corinblit: Object to that as being speculative.

The Court: Objection overruled.

The Witness: That picture ought to do \$7000 in two weeks.

Q. (By Mr. Mitchell): No more than that?

A. We would be satisfied with \$7000. We may have done more but that would be profitable. [2012]

Q. (By Mr. Mitchell): Let me ask you, that *Born Yesterday* was one of the very top pictures of the year, correct?

A. It was among the top 25 or 30, I imagine.

Q. It was a lot better than that, wasn't it, Mr. Wolff?

A. I don't think so.

Q. It was among the top two or three, wasn't it?

A. No, I don't think so. I would have to get the surrounding pictures of that particular year, but

(Testimony of Marco Wolff.)

there are usually about 25 top pictures a year that are made.

Q. If you had been able to play *Born Yesterday* alone at the Southside exclusively, you could have run that profitably for a large number of weeks on a 7 day availability, if they would let you have it, couldn't you?

A. Probably a third week instead of a second.

Q. You could run it longer than that.

A. We never ran a picture more than two weeks at the Southside.

Q. As a matter of policy?

A. No. They haven't held up strongly enough on the second week to justify considering a third.

Q. After you play a four run play-off, like they tried to do on *Born Yesterday*, for a period of two weeks in the theatres, then that picture isn't worth very much to the 14 or 21 day availabilities in that area, is it?

A. I would have to look at the books to see what the [2013] actual facts were. I knew that specific picture. I wouldn't want to hazard a guess. I knew what it did on the first run, I thought I recalled.

Q. Wouldn't you think after it has played four theatres on the 7 day run day and date in the area for two weeks, it wouldn't be worth too much on the 14 and 21 day availability in that area?

A. It would be worth less than if it only played one week, but it happens a good picture has a longer life than a poor picture has. A poor picture could play one week without good business, where a good

(Testimony of Marco Wolff.)

picture still does good business on the 7 and 14 and 21 day availabilities.

Q. And if you take a poor picture and play four 7 day runs on that, none of the theatres will do a good business, will they?

Mr. Corinblit: I object to that, your Honor, as calling for speculation and conclusion. Good business? Bad business? He doesn't know what Mr. Mitchell is talking about.

The Court: I assume as soon as the news is spread around that there is a poor picture, your attendance will drop off.

Mr. Corinblit: That's right.

The Court: Regardless of the theatre or the picture. [2014]

Q. (By Mr. Mitchell): So that no theatre will do any business?

A. That's right. On bad pictures, the public is informed without telling them, in some way. They don't come to a bad picture.

Mr. Mitchell: I think that's all, your Honor.

#### Redirect Examination

Q. (By Mr. Corinblit): Mr. Wolff, for your own information, Mr. Mitchell didn't show you the figures he had here. You stated you thought you ought to do \$7,000 business at the Southside. That is what you did, \$7,000 in two weeks, and the Paradise did \$6,700, and the La Tijera \$6,000.

Mr. Mitchell: Just a minute.

Mr. Corinblit: I have no other questions.

(Testimony of Marco Wolff.)

Mr. Mitchell: While you are arguing the thing, I think we should call attention to what the Fifth Avenue did on a 7 day run with a Universal picture of similar quality, King Solomon's Mines.

The Court: Are you trying to educate the witness or educate the jury?

Mr. Mitchell: Well, I am trying to meet Mr. Corinblit's argument.

Mr. Corinblit: I was trying to inform the jury of [2015] something Mr. Mitchell had in his hand but didn't show.

The Court: Suppose we proceed with the cross examination or redirect examination of this witness. He has some theatres he wants to run, and I suppose he would just as soon be on his way. Do you have any more questions?

Mr. Mitchell: No, I don't have any questions.

The Court: Any more questions, Mr. Corinblit?

Mr. Corinblit: No.

The Court: You may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Corinblit: The plaintiff will call Mr. Syd Lehman.

SYDNEY LEHMAN

called as a witness herein by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you please state your name?

The Witness: Sydney, S-y-d-n-e-y, Lehman, L-e-h-m-a-n.

The Court: You will have to speak up so that the jury can hear you.

The Witness: Yes, sir. [2016]

Direct Examination

Q. (By Mr. Corinblit): Mr. Lehman, what is your business?

A. I am in the business of buying and booking motion pictures for independent theatres.

Mr. Mitchell: Can't hear the witness, your Honor.

Q. (By Mr. Corinblit): You will have to speak a little louder, Mr. Lehman.

A. I am in the business of buying and booking motion pictures for independent theatres.

Q. The organization that you are connected with is Exhibitors Service, is that right? A. Yes.

Q. That organization has something to do with buying and booking pictures for the Paradise Theatre, isn't that correct? A. Yes.

Q. Approximately when did you take over the job of buying and booking for the Paradise Theatre?

A. I believe it was the latter part of December 1950.

(Testimony of Sydney Lehman.)

Q. You did the buying and booking for the Paradise from that date on to this very day, is that correct?      A. Yes.

Q. In your capacity as buyer and booker for the Paradise Theatre, beginning December 1950, did you have any conversations [2017] with any representatives of the defendants in this case, the distributors, in order to get motion pictures for the Paradise Theatre?      A. Yes, I did.

Q. Did you have any conversation with a representative of Warner Bros?      A. Yes, sir.

Q. When did you have such a conversation?

A. I believe it was during either the last week in December of 1950 or the first week in January 1951.

Q. With whom did you have that conversation?

A. Mr. Fred Greenberg, the branch manager, and Mr. Frank Reimer, the sales manager.

Q. Referring to Mr. Greenberg of Warner Bros., did you have a conversation on the telephone or face to face, do you remember?

A. I don't recall.

Q. All right. What was said by you and what was said by Mr. Greenberg?

A. Well, I told him that we wanted—that we were representing the Paradise Theatre and that we wanted his product first run in the Westchester area.

He told me I couldn't get it.

Q. By first run in the Westchester area, what



(Testimony of Sydney Lehman.)

were you talking about, what availability in terms of Los Angeles? [2018]

A. Day and date with Warner Bros. downtown, Hollywood, and so forth.

Q. After he told you you couldn't have first run pictures, did you talk to him in the same conversation about anything else for the Paradise Theatre?

A. Yes. When I was convinced he wouldn't give me any first run pictures, I asked him if he would negotiate with me on 7 day pictures.

Q. What did Mr. Greenberg say to that?

A. He told me that I would have to bid for the 7 day pictures and that he would not negotiate with me for them.

Q. With respect to bidding, did he indicate the theatres that you had to bid against in order to get the pictures from Warner Bros. on 7 day?

A. Well, as far as I recall, they were all the theatres in Inglewood, and I believe the Southside, as well.

Q. By all the theatres in Inglewood and the Southside, you mean the Southside, Academy, Fifth Avenue, Imperial, Rio, Fox, United Artists, and including the La Tijera as well, is that right?

A. Yes.

Q. What did you say to him with respect to his requirement that you bid against all of these theatres in order to get the pictures on 7 days?

A. I told him it was my contention we were not in competition [2019] with any of those theatres and that I wouldn't bid for the pictures.

(Testimony of Sydney Lehman.)

The Court: That is, you would not bid on the 7 day availability?

The Witness: Yes, sir.

Q. (By Mr. Corinblit): Was there anything more, Mr. Lehman, that Mr. Greenberg said at that time? A. Nothing that I recall.

The Court: Has that been your policy ever since, that you haven't bid on 7 day availability?

The Witness: You mean from then until now?

The Court: Yes.

The Witness: We have bid on some pictures recently.

The Court: How about to 1951, August 1951?

The Witness: No, sir, we did not bid on any 7 day pictures up to August 1951.

The Court: We are talking about Warner Bros. now.

The Witness: Yes, sir.

Q. (By Mr. Corinblit): In March 1951 the distributor Columbia, you licensed from Columbia a 7 day availability on the picture *Born Yesterday*, is that right? A. Yes, we did.

Q. That was day and date, as shown here, with the *La Tijera*, the *Imperial* and the *Southside*?

A. Correct. [2020]

Q. After you played the picture, Mr. Lehman—I will withdraw that.

I will show you Plaintiff's Exhibit 10-U for identification, a copy of a letter, and ask you whether or not this letter was sent by you to Mr. Greenberg.

A. Yes, I sent that letter.

(Testimony of Sydney Lehman.)

Mr. Corinblit: We will offer Plaintiff's Exhibit 10-U in evidence.

The Court: Does counsel want to look at it?

Mr. Corinblit: I think they know what it is.

The Court: In evidence.

The Clerk: 10-U.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 10-U.) [2021]

\* \* \* \* \*

Q. (By Mr. Corinblit): Now, subsequent to this letter, which is dated March 26, Mr. Lehman, did you have a conversation with Mr. Greenberg or conversations with Mr. Greenberg about the picture *Lullaby of Broadway*? A. Yes, I think I did.

Q. And do you remember approximately when that conversation took place?

A. No. That would be very hard to recall, but do I have a memorandum on that? Do I have a memorandum referring to my conversation?

Q. Yes. I will show you Plaintiff's Exhibit 10-W, which is a memorandum—I will first ask you to identify it. Is this a memorandum of the conversation you had with Mr. Greenberg shortly after it took place? A. Yes.

Q. And that is dated when?

A. March 30, 1951.

Q. All right. Now, do you recall what you stated to Mr. Greenberg and what he said to you in that conversation?

A. Without referring to the memorandum?

(Testimony of Sydney Lehman.)

Q. Do you recall without referring to it?

A. No.

Q. I will ask you to examine your memorandum and state whether or not this refreshes your recollection as to your conversation with Mr. Greenberg. You may look it over. [2023]

A. Yes.

Q. All right. Now, will you state, does that refresh your recollection as to what the conversation was?

A. Yes, sir.

Q. Will you state to the jury what the conversation was?

A. I talked to Mr. Greenberg and asked him if we could play *Lullaby of Broadway* on the 7 day availability at the Paradise Theatre. He informed me that the picture was playing on a 7 day availability in four houses in the area. I then asked him why we couldn't play day and date with those theatres, and he informed me that for some reason or other we couldn't play it, couldn't play day and date with these theatres, but he would discuss the same with his district manager, Henry Herbel, who at that time was en route to Los Angeles and he would let me know.

Q. After that conversation did you have a further conversation with Mr. Greenberg?

A. Yes, I did.

Q. Do you remember the date of the conversation?

A. Well, it was either the next day or not more than 48 hours later.

(Testimony of Sydney Lehman.)

Q. Now, what was said—do you remember what was said at that time?

A. Well, I think there is a memorandum on that, too, but I recall that I was constantly telephoning him trying to [2024] Mr. Herbel's reaction to what he was going to talk to him about—that is, Lullaby of Broadway, because in the first phone conversation it was left like that, that he was going to discuss it with Herbel and see if we could get the picture.

Q. Do you recall anything further about that conversation?

A. I know we didn't get the picture.

Q. Well, just to complete the conversation, do you recall anything further about it?

A. I don't recall it exactly, but if there is a memorandum there, I could refer to it.

Mr. Johnston: May I see the memorandum?

Mr. Corinblit: Yes. It is Plaintiff's Exhibit 10-X.

Mr. Johnston: Thank you.

Q. (By Mr. Corinblit): I will show you a document which has been marked Plaintiff's Exhibit 10-X, Mr. Lehman, and ask you whether or not you prepared this memorandum shortly after the conversation with Mr. Greenberg? A. Yes.

Q. All right. Does this refresh your recollection as to the date? A. Yes, April 6, 1951.

Q. You had this typed up and dated as of that time, is that right?

A. Well, it was typed immediately on that day.

(Testimony of Sydney Lehman.)

Q. Now, would you state to the jury whether this refreshes your recollection and what you now recall the conversation was?

A. Well, I talked with Fred Greenberg again but as of that date, April 6, 1951, he had not talked to Henry Herbel, and I informed him that we grossed \$8700 on *Born Yesterday* and that I felt we could as well on *Lullaby Of Broadway* as we did on *Born Yesterday*. And I offered to let him write his own deal on the picture, especially inasmuch as he had informed that *Lullaby Of Broadway* was going to play the Southside, the Imperial and the La Tijera Theatres, which were the same theatres as we played day and date with *Born Yesterday*, but that was held in abeyance, and he would do nothing until he talked to his district manager, Mr. Herbel.

Q. All right. Now, subsequently, did you have another conversation with Mr. Greenberg?

A. Yes, I did.

Q. And do you remember when that took place?

A. It must have taken place within 24 or 48 hours after the previous conversation.

Q. And do you remember what was said in that conversation?

A. Well, I do, but I know I have a memo on that.

Q. I will show you Plaintiff's Exhibit 10-Y for identification. [2026]

(Handing document to Mr. Johnston.)

(Testimony of Sydney Lehman.)

Q. And ask you whether or not you caused to be prepared or dictated this memorandum shortly after the conversation took place? A. Yes.

Q. And I will ask you whether or not this refreshes your recollection as to the conversation?

A. Yes.

Q. Now, will you state to the jury what you said and what Mr. Greenberg said?

A. Well, I talked to Mr. Greenberg again. He informed me that he talked to Mr. Herbel, his district manager, and Herbel refused to let us play the picture. I told Greenberg that I couldn't see why, and I argued with him, and finally he informed me that originally Fox had won the bid on the picture, but due to certain clearances that Fox demanded, Warners were unable to give them the picture and therefore Warners sold it to the La Tijera, the Imperial and the Southside and the Balboa, but that he wouldn't do anything as far as giving the picture to the Paradise was concerned.

Finally he said to me, "You and I can talk about this all day long. I am not going to give you the picture. If you want to go over my head and see Henry Herbel, go ahead, but you are not going to get the picture."

The Court: Mr. Corinblit, I noticed it is [2027] 3:00 o'clock, and before we get into another subject, we will take our afternoon recess.

We are about to take another recess, ladies and gentlemen, and again it is my duty to admonish you

(Testimony of Sydney Lehman.)

not to discuss this case with anyone, you are not to permit anyone to discuss it with you and you are not to formulate or express any opinion as to the rights of the parties until the matter has been finally submitted to you.

With that admonition, we will now recess until 3:20 o'clock this afternoon.

(Short recess.) [2028]

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibits 10-Z and 11-A, Mr. Lehman, and ask you whether you sent 10-Z to Mr. Greenberg on April 4th and whether you received 11-A from Mr. Greenberg on or about April 5th. A. Yes.

Mr. Mitchell: May I see those, please?

Mr. Corinblit: Yes.

The Court: They may be received in evidence.

The Clerk: 10-Z and 11-A.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 10-Z and 11-A.) [2029]

\* \* \* \* \*

Q. (By Mr. Corinblit): Calling your attention to the date of approximately April 12, 1951, do you remember having a further conversation with Mr. Greenberg with respect to the Paradise Theatre and



(Testimony of Sydney Lehman.)

clearance on the matter of Lullaby Of [2030] Broadway? Did you have such a further conversation?

A. I may have, but I would have to be refreshed before I could be certain.

Q. I will show you a document which has been marked 11-D-1, Plaintiff's exhibit for identification, and ask you whether you had this prepared, dictated and prepared, shortly after such a conversation with Mr. Greenberg. A. Yes.

Q. All right. Do you recall now that you did have such a conversation? A. Yes, I did.

Q. And the date was the date of Monday, April 12, 1951? A. Yes.

Q. Would you state to the jury what you said to Mr. Greenberg and what Mr. Greenberg said to you?

A. Well, I still continued to talk to him about Lullaby Of Broadway, and he informed me that the La Tijera Theatre had purchased the picture with clearance over the Paradise Theatre. Naturally I couldn't go along with the idea, because the La Tijera Theatre played Born Yesterday day and date with the Paradise Theatre, and they did a pretty good business on the picture, and there was no reason why they couldn't do the same thing on Lullaby Of Broadway, because this was, in my estimation, a triple A picture and was entitled to do very good business in both theatres. [2031]

(Testimony of Sydney Lehman.)

Now, Greenberg said that he just couldn't do anything about it.

And then I talked to him about his next release, Sugarfoot, which was available on a 7 day availability on the 18th of April. I told him that we had already bought a picture for the 18th of April and in the event that his bids were rejected for the 14 day availability, which would be 7 days later, whether we could negotiate for the picture.

He said yes, we could.

Q. Do you recall anything further about that conversation?      A. Not particularly.

Q. I want you to look at Plaintiff's Exhibit 1-D-1 again, Mr. Lehman, particularly the second paragraph, and ask you whether reading that refreshes your recollection as to anything further stated by Mr. Greenberg.      A. Oh, yes.

Q. All right. If it does refresh your recollection, will you state what it is.

A. He informed me that as far as he was concerned, we could play Lullaby Of Broadway on a 7 day availability, but that the La Tijera Theatre refused to permit it.

I couldn't go along with that line of thinking. It was his picture, he is the branch manager, and if it was satisfactory to him, I don't see how anybody else could tell him [2032] what to do with his picture.

That was the extent of that part of the conversation.

(Testimony of Sydney Lehman.)

Q. Subsequently, Mr. Lehman, did you have any further conversation with Mr. Greenberg about this matter of bidding and this matter of the La Tijera Theatre other than what Mr. Greenberg had previously discussed with you?

A. We were continually discussing the situation, because I was——

Mr. Mitchell: Your Honor, if we are going to have another discussion, let's fix the date and who was there.

Mr. Corinblit: All right. I'm sorry.

Q. Did you have a conversation on May 14th with Mr. Greenberg?

A. Yes, I believe we did.

Q. Do you remember what was said?

A. Well, I would rather be refreshed if there is a memorandum on it.

Q. I will show you Plaintiff's Exhibit 11-H for identification and ask you whether this is a memorandum which you prepared on or about May 14th of 1951.

Mr. Johnston: What was the number of that one, Mr. Corinblit?

Mr. Corinblit: 11-H.

The Witness: Yes. [2033]

Mr. Corinblit: What was the date of the conversation?

The Witness: May 14, 1951.

Q. (By Mr. Corinblit): Was it in person or over the telephone?

(Testimony of Sydney Lehman.)

A. It was over the phone.

Q. Will you tell us what you said and what Mr. Greenberg said?

A. Well, we were discussing runs and pictures, and he informed me that the La Tijera Theatre insisted upon clearance over the Paradise Theatre on both 7 day availabilities and 14 day availabilities, and he claimed his hands were tied and there was nothing he could do about it.

I then said to him, well, what happens if the La Tijera loses a bid to the Academy Theatre or the Fox Theatre or the Fifth Avenue Theatre? In that event could we play the pictures that the La Tijera lost day and date at the Paradise with either one of those theatres?

Well, he talked in circles, because——

Mr. Mitchell: I move to strike his statement that “he talked in circles.”

The Court: It may go out.

Mr. Corinblit: All right.

Q. What did Mr. Greenberg say in response to your statement? [2034] A. Nothing.

Mr. Mitchell: Then he didn't talk in circles.

The Witness: He talked in circles—well, all right.

Q. (By Mr. Corinblit): Now, finally, Mr. Lehman, did you have a conversation with Mr. Greenberg in about June 1951 about the picture *The Folsom Prison*?

A. Yes, I believe I did. [2035]

(Testimony of Sydney Lehman.)

Q. What did you say and what did he say, if you recall?

A. I believe there is a memorandum on that.

Q. I will show you Plaintiff's Exhibit 11-I for identification and ask you whether this memorandum of your conversation was prepared on or about the time it took place.

A. Yes, it was. Yes.

Q. All right. Now, does the document Exhibit 11-I for identification refresh your recollection as to your conversation with Mr. Greenberg on or about June 27, 1951?

A. Yes.

Q. And was that face to face or by telephone?

A. By telephone.

Q. And what did you say to him and what did he say to you?

A. Well, I asked Fred Greenberg why the picture Folsom Prison opened on June 27th at the La Tijera and there are two more theatres there—La Tijera, the United Artists and the Southside Theatres, whereas pictures like *Along The Great Divide* played the La Tijera Theatre only.

Greenberg informed me that the La Tijera will not permit us to play pictures day and date with them, but that they would permit the United Artists and/or the Southside Theatres to play day and date with them. We were excluded.

At that time I said that there must be collusion between the United Artists Theatre and the La Tijera Theatre in some [2036] form or other to

(Testimony of Sydney Lehman.)

permit the playing of pictures in that manner, and I told this to Fred Greenberg.

He called me back five minutes later and informed me that if we wanted to bid on a 14-day availability we should write them a letter to that effect.

I informed him that we didn't want to bid but we wanted the same courtesy that he gives to the La Tijera and United Artists Theatres, permitting them to negotiate on the seven-day and not bidding.

He in turn informed me that the minute he gives us a picture on the seven-day availability the La Tijera insists on bidding and that the La Tijera will not permit us to play any pictures day and date with them, and the moment this possibility arises they insist on bidding.

Q. All right. Now, to get clear the distances involved again, Mr. Lehman, the distance from the La Tijera Theatre to the United Artists Theatre is what distance?

A. May I refer to a piece of paper I have in my pocket.

Mr. Westbrook: That has been stipulated to at least ten times, I think.

Mr. Corinblit: I don't have it in front of me.

Mr. Mitchell: This just gets confusion into the record, everybody's estimate of the distances. If we have a stipulation let us take the stipulated figure.

Mr. Corinblit: All right. I have it here. It is 1.5 miles.

(Testimony of Sydney Lehman.)

Mr. Westbrook: That is correct.

Q. (By Mr. Corinblit): 1.5 miles. I don't find in the stipulation, but I think we have stipulated the distance between the Paradise and the La Tijera—

Mr. Westbrook: I believe that has been stipulated to be, two or three times, 2.1 miles.

Mr. Corinblit: Very well, 2.1 miles.

Q. (By Mr. Corinblit): Now, Mr. Lehman, calling your attention to the defendant Universal. When you took over the job of buying and booking for the Paradise Theatre, did you have any discussion with the representatives of the Universal Company in order to get pictures for the Paradise Theatre?

A. Yes, I did.

Q. And who did you talk to?

A. I talked to Bill Marriott, the branch manager, about the pictures.

Q. And when did you have your first conversation with him, if you remember?

A. Well, you see, when we took over the buying and booking for the Paradise Theatre it was I believe on December 20th.

Now, that was during the Christmas holidays and it is [2038] possible that the branch manager was away on his vacation, because most film people take their vacations during the Christmas and New Year's season. Therefore, I say I may have talked to him the last week in December, but then again it may not have been until the first week in January.

(Testimony of Sydney Lehman.)

Q. Was this on the telephone or face to face?

A. On the phone.

Q. What did you say to him and what did he say to you?

A. Well, I asked Bill for first-run pictures at the Paradise Theatre. He told me it was impossible to give me first-run pictures. We argued a little while about it. He told me that they had a five-theatre setup in which they were playing their pictures. And then I asked him for seven-day availabilities and he informed me that I would have to bid for the seven-day availability.

I informed him that as far as we were concerned we had no opposition, no competition, and therefore we would not bid for the seven day which he insisted upon.

Q. Now, subsequently—there is in evidence a letter to Mr. Marriott dated March 26, 1951, which is Exhibit 15-M in evidence, and which we have already read to the jury, in which you asked for negotiations on the picture *Bedtime For Bonzo*, on a seven-day availability. A. Yes.

Q. Now, on or about April 2, 1951, Mr. Lehman, did you [2039] have a conversation with Mr. Marriott about the matter of first run and seven-day pictures? A. Yes, sir, I believe I did.

Q. Do you have a recollection of that conversation?

A. Was that with reference to a picture called *Up Front*?



(Testimony of Sydney Lehman.)

Q. No, that comes later.

A. No, I would have to be refreshed.

Q. I will show you Exhibit 15-M, which is a memorandum, and I will ask you whether or not you caused this memorandum to be prepared on or about the time that it is dated. A. Yes.

Q. All right. Now, does that refresh your recollection as to a meeting that you had with, or a conversation you had with Mr. Marriott on or about April 2nd? A. Yes.

Q. Will you state what the conversation was, what you said and what he said?

A. Well, I talked to Bill Marriott at that time about pictures, and he informed me that his district manager, Mr. Barney Rose and the western division sales manager Mr. Blake were both in Los Angeles, and that he had discussed the Paradise situation at a meeting with both these gentlemen, and that they refused to permit us to play seven-day pictures unless we bid for the same. [2040]

I asked him at the time that in the event any of the bids were rejected would he permit us to negotiate for any of the pictures on which the bids were rejected, and he said he would.

Mr. Corinblit: To save time, your Honor, we would like to offer in evidence Plaintiff's Exhibit 15-O, a letter of Lehman to Marriott dated April 2nd.

Exhibit 15-P, a letter from Lehman to Marriott dated April 22nd.

(Testimony of Sydney Lehman.)

15-Q-1, a letter from Lehman to Marriott dated April 19th, and 15-R, a letter from Lehman to Marriott dated April 25th.

(Handing documents to Mr. Mitchell.)

Mr. Corinblit: 15-R is already in evidence. [2041]

Mr. Corinblit: Offered in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: 15-O, 15-P and 15-Q-1.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 15-O, 15-P and 15-Q-1.) [2042]

\* \* \* \* \*

Q. (By Mr. Corinblit): That last letter is dated April 19, 1951. Do you remember having a conversation with Mr. Marriott about the picture Up Front on May 2, 1951? A. Yes, I do.

Q. Was it face to face or over the telephone?

A. Over the phone.

Q. Do you remember what you said first to Mr. Marriott and what he said to you?

A. I believe I wrote a memorandum on that.

Q. I will show you Plaintiff's Exhibit 15-S for identification and ask you whether or not you caused this memorandum of the conversation to be prepared as of May 2, 1951? A. Yes, I—

Q. Just a minute. Mr. Lehman, will you first tell us what you now recall, with this document refreshing your recollection, as to the conversation with Mr. Marriott.

(Testimony of Sydney Lehman.)

A. I talked to Bill Marriott about the picture Up Front.

He told me that the picture was going to play at the Academy Theatre in Inglewood on the 7 day availability.

I asked him if I could play the picture day and date with the Academy. [2044]

He informed me that if I could obtain permission of Fox West Coast, it would be satisfactory to him. I called——

Q. Just a minute. After that conversation with Mr. Marriott, did you call someone at Fox West Coast? A. Yes, I did.

Q. When did you make the call?

A. Almost immediately.

Q. Who did you talk to?

A. Well, I tried to talk to Mr. Bert Pirosh, who was the buyer, head buyer and booker at the time, but he was in Washington and I reached his assistant, Mr. Frank Prince.

Q. What did you say to Mr. Prince and what did Mr. Prince say to you?

A. I told Frank that Bill Marriott was agreeable to our playing the picture day and date with the Academy and I requested his permission to permit us to play the picture day and date.

Frank said he would discuss it and call me back.

Q. Subsequent to that conversation with Mr. Prince, did he call you back?

A. Yes, he did.

(Testimony of Sydney Lehman.)

Q. When was that?

A. I believe it was the same afternoon.

Q. What did he say to you and what did you say to him?

A. He said we couldn't have the picture. [2045]

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 15-T for identification.

The Court: In evidence.

The Clerk: Exhibit 15-T.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 15-T.)

Mr. Corinblit: This is a letter from Lehman to Marriott dated May 4, 1951.

"Dear Bill:

"I would like to negotiate with you at your earliest convenience to play your production *Ma And Pa Kettle Back On The Farm* at the Paradise Theatre to play seven days after Los Angeles first run closing.

"May I suggest that you contact me at your earliest convenience in regard to this matter."

Q. Do you remember, did Mr. Marriott contact you on that picture?

A. No, I don't believe he did.

Mr. Mitchell: Don't you agree he offered him an opportunity to bid on that picture and all the others?

Mr. Corinblit: Well, Mr. Mitchell, if you want to make an argument, we can save that.

Q. Now, with respect to the distributors Loew's,

(Testimony of Sydney Lehman.)

I think we can hurry this along now, Mr. Lehman, did you have a [2046] discussion with someone at Loew's in order to get pictures for the Paradise Theatre when you took over the buying and booking?

A. Yes, I did.

Q. With whom did you have a conversation?

A. Mr. Tom Aspell, the branch manager.

Q. Where was it? Over the telephone or face to face?

A. I don't exactly recall where it was.

Q. All right. About when did it take place?

A. The last week in December or the first week in January.

Q. What did you say to Mr. Aspell and what did he say to you?

A. Well, at that time I told him that we wanted to play their pictures first run day and date with the other theatres that were playing their pictures first run.

He told me that he wouldn't permit us to play his pictures first run in Westchester.

Then I asked him for 7 day pictures.

He informed me that we could bid for the pictures.

I in turn informed him we didn't think we were in substantial competition with any of the theatres in Inglewood, and that is where the matter rested.

Mr. Corinblit: Referring to Exhibits 7-H, Lehman to Aspell, dated March 26, 1951, and 7-I, Aspell to Lehman—well, no, I will start all over again.

7-H, Lehman to Aspell, dated March 26, 1951;

(Testimony of Sydney Lehman.)

7-I, Aspell to Lehman, dated March 27, 1951; 7-J, Lehman to Aspell, April 2, 1951; 7-K, Aspell to Lehman, dated April 4, 1951; 7-L, which is Aspell to Lehman, dated April 9, 1951; 7-M, which is Lehman to Aspell, dated April 19, 1951; 7-N, Lehman to Aspell, dated May 4, 1951, 7-O, Aspell to Lehman, dated May 8, 1951; and 7-P, Aspell to Lehman, dated May 18, 1951, I would like to offer these exhibits in evidence. [2048]

Mr. Mitchell: The letter of March 26 is already in evidence as Defendant Loew's G-5.

Mr. Corinblit: We will offer this as part of the plaintiff's case.

Mr. Mitchell: Do we need to have a letter in twice, your Honor?

The Court: Well, I don't know if it is necessary or not. If he wants it in, I see no objection to it.

I don't think it makes very much difference whether the evidence comes in as the defendant's or the plaintiff's. Counsel sometimes seem to think there is an advantage.

Mr. Mitchell: I don't see any difference either.

Mr. Corinblit: I might say, your Honor, that tomorrow morning in advance of the session, I will submit to counsel for plaintiffs—to counsel for the defendants these exhibits and we can go over them which will save some time.

The Court: Very well.

Mr. Mitchell: No objection.

The Court: They may be received in evidence.

(Testimony of Sydney Lehman.)

The Clerk: Plaintiff's Exhibits 7-H, 7-I, 7-J, 7-K, 7-L, 7-M, 7-N, 7-O and 7-P in evidence.

(The documents referred to were marked Plaintiff's Exhibits 7-H, 7-I, 7-J, 7-K, 7-L, 7-M, 7-N, 7-O, and 7-P, and received in evidence.) [2049]

\* \* \* \* \*

Q. (By Mr. Corinblit): Mr. Lehman, when you took over the buying and booking for the Paradise Theatre in December 1950, did you discuss obtaining pictures for the Paradise with any representative of Paramount Pictures? A. Yes, I did.

Q. Who did you talk to?

A. Mr. Al Taylor, the branch manager.

Q. Was that face to face or on the telephone?

A. I don't recall exactly, but I believe it was on the phone.

Q. Approximately when did the conversation take place?

A. Either the last week in December or the first week in January.

Q. Will you tell us what you said to Mr. Taylor and what Mr. Taylor said to you?

A. Well, I told Al that we were buying and booking pictures for the Paradise Theatre and that we wanted first run in the Westchester area, to play day and date with the Paramount Theatre Downtown and on Hollywood Boulevard.

He informed me that they had a franchise agreement and it was impossible for him to give me first run.

(Testimony of Sydney Lehman.)

Then I asked him for 7 day availability.

He informed me that I was permitted to bid on the 7 day availability.

I then informed him that we weren't in competition with any of the theatres that he mentioned, and the conversation ended there.

Q. Subsequently did Paramount offer to negotiate, as distinguished from competitive bidding, with the Paradise Theatre? [2059]

A. Well, I know he offered to negotiate with me on either one or two pictures, but not on all the pictures.

Q. Other than those one or two?           A. No.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 3-B, which is a letter from Lehman to Taylor dated March 26, 1951. Attached to that inadvertently is a memorandum not properly admissible as a communication and I will detach that. They have somehow become stapled together.

Mr. Mitchell: I am sure they are not part of the same document and never were.

Mr. Corinblit: That is correct. I will detach it.

The Court: It may be admitted in evidence.

The Clerk: Plaintiff's Exhibit 3-B.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 3-B.) [2060]

The Court: Mr. Johnston, might I ask you a question? [2061]

Mr. Johnston: Certainly, your Honor.



(Testimony of Sydney Lehman.)

The Court: You notice that letter says there is no 7 day theatre in direct competition. Do you admit that the Loyola was a first run theatre and not a 7 day theatre?

Mr. Johnston: It played Fox pictures on first run.

The Court: And it played Fox pictures most of the time?

Mr. Johnston: All of the time——

The Court: Practically all of the time?

Mr. Johnston: All of the time during the period we are concerned with from August, 1950 to September, 1951, it played nothing by Fox pictures on the top half of the double bill.

The Court: Then you don't question the statement that as far as the Loyola Theatre is concerned, the Paradise Theatre was not in competition on 7 days with Loyola?

Mr. Johnston: It was perhaps not in competition on 7 days, because the Loyola was not playing 7 day availability.

The Court: Then as far as——

Mr. Johnston: I question the rest of the statement. They were in competition with the Academy and the other theatres in Inglewood.

The Court: That is your contention?

Mr. Johnston: That's right.

The Court: The plaintiff's contention is to the [2062] contrary.

Mr. Johnston: Yes.

The Court: But you do not find any fault with

(Testimony of Sydney Lehman.)

that statement as far as the Loyola Theatre is concerned?

Mr. Johnston: I find no fault with the statement on 7 day availability the Loyola and the Paradise were not in competition.

The Court: All right.

Mr. Johnston: Because they weren't playing on the same availability. [2063]

Q. Mr. Lehman, did you subsequently have a conversation with Mr. Taylor about the picture—well, about your letter of March 26th, and about the picture Molly? A. Yes, I believe I did.

Q. Do you remember when the conversation took place?

A. Not exactly, no. I would have to be refreshed.

Q. All right. We will mark as Plaintiff's next in order, which I inadvertently failed to have marked before this, a memorandum dated March 27, 1951.

The Court: Might I ask this witness a question?

Mr. Corinblit: Yes.

The Court: Was it your custom to make a memorandum of conversations that you had with these various distributors?

The Witness: Well, your Honor, Mr. Alex Schreiber was out of town for a considerable amount of time and I didn't want to forget what went on in order to brief him when he returned to town, so it was my practice to make these memoranda when he wasn't here.

The Court: Did you make the memorandum

(Testimony of Sydney Lehman.)

shortly after the conversation or immediately after?

The Witness: Almost immediately.

The Court: Almost immediately after.

The Witness: Yes, sir.

The Court: And you put down in the memoranda what you said and what the other party said?

The Witness: Yes, sir.

The Clerk: Is this for identification?

Mr. Corinblit: Yes.

The Clerk: 65 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 65 for identification.)

Q. (By Mr. Corinblit): Mr. Lehman, I will show you Plaintiff's Exhibit 65 for identification and ask you if, after reading this memorandum—I will first ask you whether or not you prepared this memorandum shortly after the conversation with Mr. Taylor. A. Yes.

Q. All right. And I will ask you to read it and tell me if this refreshes your recollection as to what was said by you and what was said by Mr. Taylor at that time. A. Yes.

Q. I will ask you to state to the jury what you recall about that conversation.

A. Well, Mr. Taylor called me on March 27th with reference to the letter that Mr. Corinblit just read, dated March 26th, and he informed me that the picture that I requested to negotiate for had already been sold.

I asked him if any pictures were not bid for would he give me an opportunity to negotiate for

(Testimony of Sidney Lehman.)

them, and he said he would. But I noticed at that time that there was a picture [2065] by the name of Molly which had not played in any of the theatres in that particular area on the seven-day availability or the 14-day availability, but Taylor had not called me and offered the picture to me.

Mr. Corinblit: I offer in evidence Plaintiff's Exhibit 3-D-1, which is Mr. Lehman's letter to Mr. Taylor.

The Clerk: 3-D-1.

The Court: In evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 3-D-1.) [2066]

\* \* \* \* \*

Q. (By Mr. Corinblit): Now, Mr. Lehman, subsequently did you have a conversation with Mr. Carmichael of Paramount with regard to the pictures September Affair and The Redhead And The Cowboy on the 14-day availability?

A. Yes, I believe I did.

Q. Do you remember when that conversation took place?

A. I don't know. I would imagine it was sometime in April of 1951.

Q. And was it face to face or on the telephone?

A. No. I believe it was on the phone.

Q. And what did he say to you and what did you say to him?

A. It is pretty hard to recall. Didn't I make a memorandum on that?

(Testimony of Sidney Lehman.)

Q. Yes, you did. I will show you Plaintiff's Exhibit 3-D-2 for identification and ask you whether you caused this memorandum to be prepared shortly after the conversation. A. Yes, I did.

Q. All right. I will ask you to look at it and then tell me if it refreshes your recollection as to what you said to Mr. Carmichael and what Mr. Carmichael said to you. A. Yes.

Q. Will you state what you recall of the conversation? [2067]

A. Well, I wanted to buy *September Affair* and *The Redhead And The Cowboy* on a 14-day availability and Ralph Carmichael, the sales manager for Paramount, informed me that these pictures had been sold to the Academy and the Imperial Theatres with clearance over the Paradise Theatre and therefore I couldn't play the pictures on that availability.

Mr. Mitchell: Will you speak up a little, Mr. Lehman?

The Witness: Yes, surely.

Mr. Mitchell: It is impossible for me to hear you.

Will you read the last portion of the answer, Mr. Reporter?

(Answer read.)

Q. (By Mr. Corinblit): You mentioned the Academy. I want to show you your memorandum Exhibit 3-D-2, and ask you if that refreshes your recollection.

A. I am sorry. It was the Fox and Imperial and not the Academy.

(Testimony of Sidney Lehman.)

Q. Now, the Imperial Theatre—here is the Paradise and the Imperial is located here and the Fox Theatre is here in downtown Inglewood.

When you took over buying and booking for the Paradise Theatre did you discuss buying pictures for the Paradise with anyone at Twentieth Century-Fox? A. Yes, I did. [2068]

Q. Who did you talk to?

A. I talked to Clyde Eckhardt, the branch manager.

Q. When did that take place?

A. Either the last week in December or the first week in January.

Q. Was that face to face or over the telephone?

A. I don't recall which it was.

Q. All right. What did you say to him and what did he say to you?

A. Well, I informed Clyde that we would like to play their pictures first run in that area.

He informed me that they played at the Loyola Theatre and that it was impossible for them to give them to me.

I then asked him if I could play his pictures 7 days in that area.

He said no, that they were obligated to play at the Fox theatres in Inglewood, and that is where the conversation ended.

Mr. Corinblit: We will offer in evidence at this time Plaintiff's Exhibit 18-E (handing document to counsel).

I offer it in evidence, your Honor.

(Testimony of Sidney Lehman.)

The Court: In evidence.

The Clerk: Exhibit 18-E.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 18-E.)

Mr. Corinblit: I don't think I will read the letter again. It is a copy of the same letter that was sent to the other distributors re the picture *Born Yesterday*, and here the request is made to negotiate for the picture *Rawhide* on the 7 day availability.

I offer in evidence Plaintiff's Exhibit 18-F, which is a request re *Sword of Monte Cristo* and *Lucky Kane*.

In evidence already is 18-G, which is Mr. Eckhardt's reply.

Mr. Johnston: This is in evidence, you say?

Mr. Corinblit: Yes, 18-G is already in evidence, in which reference is made to the policy of Twentieth Century-Fox. I won't read that at this time.

Q. (By Mr. Corinblit): Mr. Lehman, when you took over the buying and booking for the Paradise Theatre, did you have any discussions with any representative of RKO?      A. Yes, I did.

Q. Who did you talk to?

A. Mr. Harry Cohen, the branch manager.

Q. Did that take place about the same time?

A. Just about, yes.

Q. As a matter of fact, when you took over the buying and booking, naturally, as part of your job, it was your job to contact everybody?

A. Immediately. [2070]

(Testimony of Sidney Lehman.)

Q. Immediately, to talk to them about getting pictures for the Paradise Theatre? A. Yes.

Q. That is the business you were in?

A. Yes.

Q. When you talked to Mr. Cohen, was that face to face or on the telephone?

A. That is hard to recall. It was either one.

Q. What did you say to Mr. Cohen and what did he say to you?

Mr. Mitchell: I assume, your Honor, we have the same running objection to these conversations that don't have anything to do with the defendants in this case?

The Court: Yes, you can have a running objection. Same objection and same ruling.

Q. (By Mr. Corinblit): You may answer, Mr. Lehman.

A. I talked to Harry and asked Harry for first run pictures in that area.

He informed me that their pictures at that time were playing first run at the RKO Hillstreet and the RKO Pantages Theatres in downtown and Hollywood, and that he couldn't give me first run pictures.

I then asked him for 7 day availability pictures.

He informed me that I would have to bid for the pictures. [2071]

I told him that we were not in competition with any of the theatres in that area and, therefore, we were not bidding for the pictures, and that is where that conversation ended.



(Testimony of Sidney Lehman.)

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 22-R, which is a letter from Lehman to Cohen dated March 26, 1951.

The Court: In evidence.

The Clerk: Exhibit 22-R.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 22-R.)

Mr. Corinblit: I don't think I need read this letter. It is the same letter which referred to Born Yesterday and asked to negotiate at this time with reference to the picture Vendetta.

Q. (By Mr. Corinblit): You subsequently played the picture Vendetta, did you not, Mr. Lehman? A. Yes, we did.

Mr. Johnston: On a 7 day availability.

Mr. Corinblit: That is correct.

Q. After you played that one picture from RKO, you sent another letter? A. Yes.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 22-X, which is a letter from Lehman to Cohen dated [2072] April 2, 1951.

The Court: In evidence.

The Clerk: Exhibit 22-X.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 22-X.)

\* \* \* \* \*

Mr. Corinblit: We will now offer in evidence the following exhibits:

23-A, which is a letter from Lehman to Cohen, April 19, 1951, attached to which is Mr. Cohen's

(Testimony of Sidney Lehman.)

reply dated April 20, 1951, and a letter May 7, 1951, Lehman to Cohen.

Mr. Johnston: What is the number?

Mr. Corinblit: 23-C and 23-D, the reply, Cohen to Lehman, dated May, 1951. I will offer them in evidence, your Honor.

The Court: In evidence.

The Clerk: 23-A, 23-C and 23-D.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 23-A, 23-C and 23-D.) [2074]

\* \* \* \* \*

Q. (By Mr. Corinblit): With respect to the seven-day availability that Mr. Cohen—did Mr. Cohen offer to negotiate for the picture *The Thing*?

A. No.

Q. Now, shortly after this or, rather, early in May did you have a conversation with Mr. Cohen about *The Thing* with respect to the Paradise Theatre on a 14-day availability at the Paradise Theatre? A. I believe I did.

Q. Do you remember about when that conversation took place?

A. I believe it was sometime in May, but just when I don't recall.

Q. Do you recall whether it was face to face or on the telephone?

A. I believe it was on the telephone.

Q. Do you remember what he said and what you said?

(Testimony of Sidney Lehman.)

A. No, I don't offhand unless I have a memo on it.

Q. Yes, you do. I will show you Exhibit 23-F and ask you whether or not you caused this memorandum to be prepared shortly after the conversation took place. A. Yes, sir, I did.

Q. I will ask you to read it and then state if that refreshes your recollection as to the conversation.

A. Yes. [2076]

Q. All right. Will you state what you recall about the conversation between you and Mr. Cohen?

A. Well, I talked to him and asked him about playing *The Thing From Another World* on 14-day availability. He advised me that he would call me back.

He called me an hour and a half later and he informed me that the picture was sold to the Academy Theatre and that Frank Prince refused him permission to permit us to play the picture day and date with the Academy Theatre.

Q. All right. Now, who was Mr. Prince at that time?

A. Frank Prince at that time was the assistant to Bert Pirosh, the head buyer and booker of Fox West Coast Theatres.

Q. Now, sometime in June did you have a conversation with Mr. Cohen about the picture *Sealed Cargo*? A. Yes, I did.

Q. Was that face to face or on the telephone?

A. I am not certain, but I believe it was on the phone.

(Testimony of Sidney Lehman.)

Q. And what did you say and what did he say to you?

A. Well, I wanted to play *Sealed Cargo* on the seven-day availability at the Paradise Theatre.

Don't I have a memo on that, Mr. Corinblit?

Q. Yes, you do. I will show you Exhibit 23-J-1 and ask you whether you caused this memorandum to be prepared shortly after the conversation with Mr. Cohen. [2077]

A. Yes, I did.

Q. I will ask you to examine it and state whether that refreshes your recollection as to the conversation.

A. Yes.

Q. All right. I will ask you to state what you recall of the conversation.

A. Mr. Harry Cohen advised me that the United Artists Theatre had won the bid on *Sealed Cargo* and I had the information that the picture was playing not only at the United Artists Theatre on a seven-day availability, but also at the La Tijera Theatre, and I asked him how it was possible that two theatres could play *Sealed Cargo* on the seven-day availability.

He informed me that the United Artists Theatre had won the bid and released clearance over the La Tijera Theatre.

Q. All right. Now, Mr. Lehman, let me stop you right there.

The La Tijera Theatre is located here and the United Artists Theatre is located here and it has been stipulated in this case that the distance between the two theatres is 1.5 miles.

(Testimony of Sidney Lehman.)

When you took over the buying and booking for the Paradise Theatre, Mr. Lehman, did you talk to anyone at Columbia? A. Yes, I did.

Q. And was that again in December or early January? A. Yes, sir.

Q. And who did you talk to at Columbia?

A. Mr. Wayne Ball, branch manager.

Q. Who was Wayne Ball?

A. He was the branch manager.

Q. All right. And was that face to face or on the telephone?

A. I don't recall exactly, but I believe it was on the phone.

Q. And what did you say to him and what did he say to you?

A. Well, at that time I informed Wayne that we wanted to play his pictures first run day and date with other theatres that were playing his pictures, and he said he would not permit us to do it.

I asked him if we could play his pictures on a seven-day availability, and he informed me that we could not play his pictures on the seven-day availability and that is where the conversation ended.

Q. Do you recall, Mr. Lehman, subsequently the picture *Born Yesterday* that the Paradise played in March of 1951, was a Columbia picture?

A. Yes, it was.

Q. That is the picture that you played day and date [2079] with the *La Tijera*?

A. Yes, sir.

Q. The Paradise, the Southside and Imperial.

(Testimony of Sidney Lehman.)

A. Yes.

Q. Now, do you remember that subsequently the Paradise played a picture from Columbia called Santa Fe?      A. Yes, I do.

Q. Now, did you have a conversation with Mr. Mel Evidon of Columbia with respect to the picture Santa Fe?      A. Yes, I did.

Q. Do you remember when that conversation took place?

A. I believe it was sometime in May of 1951.

Q. All right. And was that face to face or on the phone?      A. Yes.

Q. That was in your office?      A. Yes.

Q. Will you tell me what Mr. Evidon said to you and what you said to him?

A. We had the picture Santa Fe bought on the seven-day availability. The seven-day availability was on a Wednesday. I don't remember the exact date, but due to the fact that the Paradise Theatre had been rented to some organization for a meeting we couldn't open this picture until Friday.

We opened a Metro picture, a companion picture with [2080] Santa Fe called Father's Little Dividend, and I believe we opened that on Thursday because we could take off the second feature and replace it with Father's Little Dividend. The first feature we couldn't take off because it was a percentage picture. I believe the name of the picture was Valentino.

We had Santa Fe scheduled to open on Friday with Father's Little Dividend and Mel Evidon, the

(Testimony of Sidney Lehman.)

sales manager at Columbia, came up to the office and he said there was an awful lot of trouble because of the fact that Fox had Santa Fe, had been playing Santa Fe since Wednesday. I forget the name of the picture they had with it, but it wasn't a very big picture. And that we were playing Santa Fe with Father's Little Dividend and therefore Fox pulled the picture after two days when they had it scheduled for seven and refused to play it.

Q. Now, did Mr. Evidon state to you—did he state to you what was the reason that Fox had stated they were going to pull the picture?

A. Well, if I remember correctly—I know I have it in a memorandum, but if I remember correctly the reason was that we had them out-booked.

The Court: What do you mean by "out-booked?"

The Witness: Well, your Honor, we had a better second feature than they did and therefore our program was more attractive in their estimation.

Q. (By Mr. Corinblit): That was with reference to the [2081] second picture? A. Yes, sir.

Q. Now, with reference to the first feature did he give you the reason for the pulling of the picture Santa Fe? A. (No response.)

Q. If you recall.

A. I know there was some conversation about it and I think I have it in a memorandum, but I just can't recall.

Q. I will show you a memorandum—your memorandum exhibit marked 27-G and call your attention to the second paragraph thereof.

(Testimony of Sidney Lehman.)

First, I will ask you if you caused this to be prepared shortly after your conversation with Mr. Evidon.

A. Yes, I did.

Q. I will ask you to read particularly the last portion of the second paragraph and ask you if that refreshes your recollection on that score.

A. Yes, it does.

Q. Now, calling your attention particularly to the second paragraph of the memorandum and the last portion of it, I will ask you to state whether or not that refreshes your recollection, and you can answer that yes or no, Mr. Lehman. If it does, all right, and if it doesn't that ends it.

A. Well, the—— [2082]

Mr. Mitchell: I can't hear you.

The Court: Answer the question yes or no.

Q. (By Mr. Corinblit): Does it refresh your recollection? A. Not particularly. [2083]

Mr. Mitchell: May I see that, please?

Mr. Corinblit: Yes, certainly.

Q. (By Mr. Corinblit): When you began buying and booking for the Paradise Theatre, did you talk to anyone at United Artists?

A. Yes, I did.

Q. Who did you talk to at United Artists?

A. Bert Pollard, who was at that time branch manager.

Q. Was that face to face or on the telephone?

A. I don't remember.



(Testimony of Sidney Lehman.)

Q. What did you say to him and what did he say to you?

A. I informed Bert we wanted their pictures first run to play day and date with the other first run theatres in town.

He refused to give them to me.

I then asked him for his pictures 7 days.

He refused to give them to me and that is where that conversation ended.

Mr. Corinblit: We will offer in evidence Plaintiff's Exhibit 30-I, which is a letter from Lehman to Pollard dated March 26, 1951; a letter, 30-J, from Lehman to Pollard, dated April 19, 1951; a letter from Pollard to Lehman dated April 25, 1951, which is 30-L; and a letter from Lehman to Carnegie, dated April 30, 1951, which is 30-M.

The Court: In evidence, [2084]

The Clerk: 30-I, 30-J, 30-L and 30-M.

(The exhibits referred to were received in evidence and marked Plaintiff's Exhibits 30-I, 30-J, 30-L and 30-M.) [2085]

\* \* \* \* \*

Q. (By Mr. Corinblit): Subsequent to this letter of April 30, 1951, did United Artists offer to negotiate with the Paradise Theatre for 7 day pictures? A. Yes.

Q. When did that take place?

A. I may be wrong, but I believe it was some time around August, around there, 1951.

Q. Between the date of your letter, which is April 30th, and that date in August, did United

(Testimony of Sidney Lehman.)

Artists offer to negotiate for 7 day pictures?

A. No.

Q. Mr. Lehman, with respect to the theatres in the Inglewood-Westchester area—— [2087]

The Court: May I ask a question before you go on? I want to ask this witness a question.

Mr. Corinblit: Yes, sir.

The Court: There seems to be quite a difference between negotiating for pictures and bidding for pictures.

The Witness: Yes, sir.

The Court: From the standpoint of the exhibitor, what advantage does the exhibitor have in negotiating over bidding, or what advantage is there to bidding?

The Witness: There are so many pictures available, your Honor, each week as they come off first run.

The Court: Speak up loud. You are speaking to the jury. I want the jury to hear this.

The Witness: I'm sorry. There are so many pictures available each week as the pictures move out of first run and go into the 7 day availability. For instance, if five pictures are available, and if you are in a position to negotiate, you could negotiate for two of those pictures that you believe could play to the best gross of the theatre. But in the event you had to bid for those pictures, you couldn't bid for five pictures, because if you won the bid on all the pictures, you couldn't possibly play them.

(Testimony of Sidney Lehman.)

Therefore, you pick two pictures and you bid for them. One you may get and one you may lose. Meantime you may lose the other three you didn't bid on and then you are [2088] without a picture. It is a very unsatisfactory situation.

The Court: From the standpoint of the exhibitor?

The Witness: From the standpoint of the exhibitor, yes, sir.

The Court: But from the standpoint of the distributor, the distributor is interested in getting his pictures out at the most advantageous terms, isn't he?

The Witness: Well, your Honor——

Mr. Corinblit: Just a minute. Your Honor, I object to that question.

The Court: All right. You object. All right. I will withdraw the question. I will let the other side go into that, if they want to, when they have the exhibitors here.

Mr. Corinblit: The distributors, you mean?

The Court: Yes. But it is your opinion that as far as the exhibitor is concerned, it is much better for the exhibitor to negotiate?

The Witness: Yes, sir.

The Court: Than it is to bid?

The Witness: Yes, sir.

Q. (By Mr. Corinblit): Mr. Lehman, turning to this Inglewood-Westchester area, did you have an opinion in 1950-1951 as to whether the Paradise Theatre was in substantial competition with any

(Testimony of Sydney Lehman.)

of the theatres in Inglewood or the La [2089] Tijera—that is, did you have an opinion as to whether they were in substantial competition with the Southside Theatre? Did you have such an opinion?      A. Yes, I did.

Q. What was your opinion?

A. That they were not in competition with the Southside Theatre.

Q. Did you have an opinion as to whether the Paradise was in substantial competition with the Academy or the Southside Theatre?

A. Yes, I did.

Q. What was your opinion?

A. That they were not in competition with either of those theatres.

Q. Did you have an opinion as to whether the Paradise was in substantial competition with the theatres in Inglewood downtown, including the Inglewood, UA, Ritz, and so forth?      A. Yes, sir.

Q. What was your opinion?

A. That we were not in substantial competition with any of those theatres.

Q. How about your opinion with respect to the La Tijera?

A. That we were not in substantial competition with the La Tijera Theatre.

Q. Now, with respect to these theatres and your opinion [2090] on substantial competition, what was the basis upon which you had that opinion?

A. Well, all these theatres that you mentioned and the Paradise Theatre are located in separate

(Testimony of Sydney Lehman.)

areas. They have separate shopping centers and they are complete and distinct areas unto themselves, and I didn't feel that one area would take any business from another, or vice versa. I believe in a highly populated area, such as those theatres were located in, that there was no substantial competition.

Q. Did the matter of distance come into play at all?

A. Yes. Distance is a very important thing, and in highly populated areas, the area that you consider no competition narrows considerably.

Mr. Corinblit: I think that is all, your Honor. I have no further questions.

The Court: You didn't represent any of the theatres in the immediate neighborhood, did you, the immediate territory?

The Witness: No, sir.

The Court: How long did you say you had been booking and buying pictures?

The Witness: I associated myself with Exhibitors Service in December, 1946, but I had been buying and booking pictures prior to that in other territories.

The Court: In the buying and booking of pictures, [2091] you came into this question of what is meant by substantial competition?

The Witness: Oh, yes, sir.

The Court: It is a question that arises constantly in the trade, is it not?

The Witness: Yes, sir.

(Testimony of Sidney Lehman.)

The Court: All right.

Mr. Mitchell: Your Honor, rather than interrupt, I wonder if I could get my papers organized during the recess.

The Court: Yes, we can take our recess.

Ladies and gentlemen of the jury, we are about to take another recess.

Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until five minutes after 11:00.

(Recess.) [2092]

The Court: Do you stipulate the jury are present and in the jury box?

Mr. Corinblit: So stipulated.

Mr. Mitchell: Yes.

The Court: You may proceed.

#### Cross Examination

Q. (By Mr. Mitchell): Mr. Lehman, I would like to establish when Mr. Schreiber was away from Los Angeles during a particular period of time and I think we can either do it by stipulation or by your refreshing your recollection. If you will look at page——

The Court: Counsel will stipulate with you on that, if he knows the facts.

(Testimony of Sidney Lehman.)

Mr. Mitchell: I want to establish that Mr. Schreiber was away from Los Angeles from December 25, 1950 to February 2, 1951.

The reference is at page 451, lines 24 to 25 of his deposition, and page 445, line 6 to 15.

The Court: You mean Mr. Schreiber's deposition?

Mr. Mitchell: Yes.

The Court: Counsel will stipulate to that.

Mr. Mitchell: He wants to check it and I am sure he will. It is page 451, lines 24 to 25. [2093]

Mr. Corinblit: Yes.

Mr. Mitchell: Which covers the period at the end of the year and then 445, line 6 to 16.

Mr. Corinblit: Yes. Now, your first request is what?

Mr. Mitchell: I am asking you to stipulate that Mr. Schreiber was absent from Los Angeles from December 25, 1950, to February 2, 1951.

Mr. Corinblit: Yes, I will stipulate to that. I can't quite put these figures together.

(Discussion between Mr. Westbrook and Mr. Corinblit inaudible to the reporter.)

Mr. Corinblit: Yes, that is correct. We will stipulate to that.

Mr. Mitchell: I would also like to have you look, if you will, please, Mr. Corinblit, at page 418, line 9 to line 14, and stipulate with me that Mr. Schreiber was in Los Angeles from February 5, 1951, to April 23, 1951.

Mr. Corinblit: So stipulated.

(Testimony of Sidney Lehman.)

Q. (By Mr. Mitchell): Thank you. Now, Mr. Lehman, during the period that Mr. Schreiber was away from Los Angeles, from December 25, 1950, to February 2, 1951, you were doing the buying and booking for the Paradise, weren't you?

A. Yes, I was.

Q. And during that time you did not make any memoranda at all, did you? [2094]

A. Well, if they are not here, I didn't.

Q. You started making memoranda immediately after you wrote that Born Yesterday form letter that you sent to all the distributors on March 26, 1951, isn't that right? A. I believe so.

Q. And then you started making memoranda on March 26, 1951, right?

The Court: He said he believed so.

Mr. Mitchell: All right, your Honor.

Q. And that was during the period of time when Mr. Schreiber was here in Los Angeles.

I call your attention to that fact. Do you want to tell me that you were making these memoranda because Mr. Schreiber was away?

A. Well, no, but you see, it wasn't possible to get Mr. Schreiber on the phone at any particular moment. I don't know that he was in town or out of town.

I know Mr. Schreiber has made periodical trips to San Francisco and Palm Springs and things of that sort which I am sure was in that period.

But also I know that on many occasions I tried to get Mr. Schreiber on the phone and on complete



(Testimony of Sidney Lehman.)

days would pass and I was unable to reach him and therefore those memorandums were for his information and to refresh my memory when I discussed the same with him. [2095]

Q. Do you keep memoranda for your other accounts? A. Yes, I do.

Q. For each of them?

A. Well, no. We have many accounts that do not have the situation that the Paradise has with respect to pictures and, therefore, there is no reason for it. But when important matters come up, when something arises that I consider important, I write a memorandum.

Q. You prepared that form letter and those memoranda for this lawsuit, didn't you?

A. No, I wouldn't say so.

Q. That is what you had in your mind, wasn't it? A. No, I don't believe it was.

Q. Did anybody tell you to do it for that purpose? A. No.

Q. Mr. Lehman, clearance is an agreement between a distributor and an exhibitor that a picture licensed to the exhibitor will not be permitted to play in another theatre until after the elapse of some days, isn't that what clearance is?

A. No, I don't agree with that. Clearance is not primarily an agreement between an exhibitor and a distributor.

The Court: What is clearance?

The Witness: Clearance is either a demand from the distributor which in some cases the exhibitor

(Testimony of Sidney Lehman.)

agrees to because [2096] he can't help himself. Or, it is a demand from the exhibitor which a distributor may agree to if he thinks it is fair, but very seldom you will find that it is an agreement between a distributor and an exhibitor.

Q. (By Mr. Mitchell): Let us talk about it for just a moment from the standpoint of the man in favor of whom clearance is granted.

You license pictures for a large number of theatres, don't you? A. Yes, I do.

Q. How many?

A. Well, at the present time, maybe 40 or 42.

Q. How many in 1950 and '51?

A. Maybe 50 or 55.

Q. Some of those theatres for whom you—for which you licensed pictures have clearance over subsequent run theatres, surely, don't they?

A. Yes.

Q. All right. Now, let us talk about the theatre in favor of whom the clearance runs.

Either in writing or by custom or by statement, a distributor arranges with the prior exhibitor so that the same picture can't play in some other theatres, until after the elapse of a period of time. That is in favor of the prior theatre, isn't that correct? [2097]

A. That would be in favor of the prior theatre.

Q. And that would be what clearance would be in favor of the prior theatre? A. Yes.

Q. Now, that is an advantage to the prior theatre isn't it? A. Yes.

(Testimony of Sidney Lehman.)

Q. And it is something that he bargains for and pays for, isn't it?

A. Well, not necessarily, no.

Q. Well, if he makes an arrangement with this prior exhibitor, makes an arrangement with the distributor that no other theatre in a certain area shall play until after the elapse of so many days, that is something that they discuss in their bargaining?

A. If he makes an arrangement.

Q. If he makes an arrangement. That is part of the bargain?

A. If he makes an arrangement.

Q. And he pays for that, doesn't he?

A. Well, that is a subject of negotiation. I don't know.

Q. That is right. And you understand what it means?

The Court: That is one of the things he gets when he licenses the picture. [2098]

Mr. Mitchell: Sure.

The Court: You say he pays for it. He pays for everything.

Mr. Mitchell: That is right. He pays for the use of the picture and the right not to have anybody else use it for so many days, right?

The Witness: Well, if he makes that arrangement.

Q. (By Mr. Mitchell): That is right. That is what we are talking about, Mr. Lehman.

The Court: May I ask a question. Do you know of any pictures you can use without a clearance?

(Testimony of Sidney Lehman.)

The Witness: Yes, sir.

The Court: There are such pictures?

The Witness: You mean as far as the Paradise is concerned?

The Court: Generally.

The Witness: Surely.

The Court: All pictures are sold subject to clearance, are they not?

The Witness: No, sir.

The Court: They are not?

The Witness: No, sir. We have many situations—well, just take for example the town of Mojave. Mojave is a town 92 miles from Los Angeles, and they can play the picture today or next year or any time. [2099]

The Court: That is because there is no competition between them?

The Witness: All right, then I will give you another example.

The Court: Where there is competition between theatres, there is always clearance, isn't there?

The Witness: Where there is competition?

The Court: Yes.

The Witness: Yes. [2100]

The Court: Where there is competition, there is always clearance.

The Witness: Yes.

The Court: Regardless of what theatre it is.

The Witness: Unless the theatre is playing day and date.

(Testimony of Sidney Lehman.)

The Court: Unless it plays day and date.

The Witness: Yes, sir.

Q. (By Mr. Mitchell): All right. Now you understand what I mean when I used the phrase priority of availability as distinguished from clearance?

A. No. I would like you to explain it.

Q. By that I mean that a picture is licensed to a theatre under an agreement in which the distributor says, "I won't license it to anyone else in an area at the same time," in other words, an exclusive run, but no arrangement whereby there will be an elapse of time. Understand that? A. No.

Q. All right. You never heard of an arrangement for priority of availability without an elapse of time between that exhibitor's run and the next run?

A. Do you mean that an exhibitor can play a picture by arrangement with a film company on a certain play date with clearance over a theatre who can come in on the following day after—— [2101]

Q. After he finishes.

A. ——after the first theatre gets through?

Q. Yes. A. Is that what you mean?

Q. Yes. Well, use Inglewood. Several of these distributors license a 7 day run.

A. That's right.

Q. Exclusively, let us say, to one theatre.

A. Yes.

Q. And then they will license a 14 day run.

A. Yes.

Q. So that if the first theatre plays the picture

(Testimony of Sidney Lehman.)

7 days, then the second theatre can play it on the 8th or 9th or 10th or 11th, and so forth, days.

A. Yes.

Q. What I mean is the first theatre gets a priority of availability. A. Yes.

Q. Do you understand that term now?

A. Yes.

Q. That is a little different than clearance, because there is no elapse of time agreed to?

A. We never differentiate between the two.

Q. I see. You use the word clearance with respect to both of those arrangements, don't you?

A. Yes.

Q. So that it covers both of them.

A. Yes.

Q. But you recognize that there are two different types of exclusivity or priority, don't you?

Mr. Corinblit: Your Honor, I will object to that as being highly speculative. The witness has testified there is no difference between the two terms, and Mr. Mitchell is trying to establish some distinction which doesn't exist.

Mr. Mitchell: Obviously, on the face of it there is a difference. He has already said so.

Q. You recognize the difference, don't you?

The Court: Do you recognize a difference?

The Witness: No, sir.

Q. (By Mr. Mitchell): All right. Now, you spoke about some picture where you talked to Mr. Prince of Fox West Coast asking him to waive

(Testimony of Sidney Lehman.)

clearance. A. Yes, sir.

Q. You understood what the situation was, that Fox West Coast had bought the picture with clearance, isn't that what you understood had happened?

A. Yes, but I was told——

Q. All right, and you were asking him to waive something that he bought, isn't that right?

A. No. [2103]

Q. No? You were asking him to waive the clearance. A. May I explain it to you?

Q. You can answer me yes or no and then you can explain as much as you want.

The Court: He has already said no. He has answered the question no.

Mr. Mitchell: He misspeaks himself, your Honor. He just said under direct examination he asked Mr. Prince to allow him to play the picture, which is to waive the clearance.

The Court: I don't know. He used the words "waive the clearance"?

Mr. Mitchell: I was asking him——

The Court: He said allow him to play the picture. He didn't use the word clearance.

Q. (By Mr. Mitchell): You knew Fox West Coast had clearance, didn't you, on those pictures?

The Witness: Your Honor, may I answer this in my own way?

Mr. Mitchell: Go ahead and answer it yes or no and then explain all you want to.

The Witness: I was told by the branch manager

(Testimony of Sidney Lehman.)

of the company that owned the picture that if Mr. Frank Prince would grant us permission to play the picture with him, it was all right with the branch manager. That is the only way and [2104] the only reason I called Frank Prince. I wouldn't presume to call him without the approval of the company that owned the picture.

Q. (By Mr. Mitchell): You knew he had bought clearance on that picture, didn't you? You have been in the business a long time.

A. I don't know that he bought it or he didn't buy it.

Q. You knew that he had clearance on the picture.

A. He may have. I wouldn't guarantee it.

Q. You knew that is why the distributor said to call him, because he had clearance, isn't that so?

A. No.

Q. How long do you say you have been in this business? A. 39 years.

Q. If the Paradise and La Tijera played day and date on a 7 day run, some percentage of people living between the Paradise and the La Tijera would exercise a choice about which theatre they would go to, right?

A. I would say a small percentage.

Q. The La Tijera would not only draw people from the east of the theatre, but also from the Westchester area, isn't that true?

A. It may. It is possible.



(Testimony of Sidney Lehman.)

Q. And the Paradise on an exclusive 7 day run would draw from Inglewood, Westchester, and the surrounding areas, [2105] wouldn't it?

A. Yes.

Q. And if the Paradise played on a day and date run with the Fox Inglewood, it would draw from a more reduced area, isn't that right?

A. No, sir.

Mr. Mitchell: I would like to read from Mr. Lehman's deposition at page 62, lines 9 to 19.

Mr. Corinblit: Just a minute, counsel. I think you ought to follow the procedure of showing the witness the portion of the deposition and asking him to look at it, just as we have done with each one of your witnesses.

Mr. Mitchell: You don't agree the witness so testified?

Mr. Corinblit: If you will show it to the witness, then we will proceed in the proper manner.

Q. (By Mr. Mitchell): I want to know if you so testified, page 62, lines 9 to 20. You can answer that yes or no. Yes or no.

Mr. Corinblit: Did you so testify, Mr. Lehman?

Mr. Mitchell: I am asking the question.

The Witness: Yes, I testified that.

Mr. Mitchell: All right. I will read it, with permission of the court.

“Q. Now, if instead of having one 7 day [2106] availability in the Inglewood-Westchester area, there were two offered on a particular picture, and

(Testimony of Sidney Lehman.)

one of those availabilities played in the Fox Inglewood and one in the Paradise Theatre, I take it it would be your opinion that the area from which the Paradise Theatre would draw patronage would be reduced somewhat as against the situation where there was just one 7 day availability, is that correct?

“A. Yes.”

Mr. Corinblit: Keep reading, Mr. Mitchell, please, on page 62.

Mr. Mitchell: I am through reading.

Mr. Corinblit: Your Honor, at this point, when there is a question——

The Court: Just mark it and when you get the witness you can back and read it.

Mr. Corinblit: Your Honor, ordinarily at the time, if counsel reads from a portion of a deposition and didn't read the complete deposition, the procedure, as I understand it, is that if counsel won't read it, the opposing side is permitted to read the portion which makes the answer complete. This is excising and I ask that permission, your Honor.

Mr. Mitchell: It is a complete answer.

Mr. Corinblit: I ask your Honor—— [2107]

The Court: All right, go ahead and read it. You can read it faster than we can argue.

Mr. Corinblit: “Q. Or, putting it another way, that the existence of a second 7 day availability in this case playing in the Fox Inglewood would reduce the patronage of the Paradise Theatre on the 7 day availability.

(Testimony of Sidney Lehman.)

“A. No, I wouldn’t say that. It has been our experience that if it is a good picture, an A picture, we can do more business playing an A picture day and date with other theatres that are not too far away than we can by playing, let us say, a B plus picture alone. It is the draw of the picture.”

Q. (By Mr. Mitchell): When the Paradise played pictures on the 21 day availability, you found people in Westchester would not come to the Paradise because they had already seen the pictures in the Inglewood theatres or the other theatres, isn’t that right?

A. In Inglewood or other theatres.

Q. The best advertising a picture can get is word of mouth advertising, isn’t it?

A. Yes, that is reasonable.

Q. And you also used radio advertising to draw people from Inglewood, among other areas?

A. Yes. [2108]

The Court: Mr. Mitchell, does a booker and buyer have to do advertising? I didn’t understand it that way.

Did you have anything to do with the advertising?

The Witness: No, sir.

Q. (By Mr. Mitchell): You knew about it?

A. Only when Mr. Max Schreiber or the theatre manager or possibly Mr. Alex Schreiber discussed it with me, but I did no know about all the advertising they did. We had nothing to do with it.

Q. Your idea of substantial competition is this, that if theatres draw a portion of their patronage

(Testimony of Sidney Lehman.)

from the same area, they are not competitive with one another. It is only when the theatres depend 100 per cent, when one theatre depends 100 per cent upon the same patronage as the other theatre, isn't that your idea of substantial competition?

A. Correct.

Q. It has to depend 100 per cent identity of drawing power? A. Correct.

Q. So that if 50 per cent of the La Tijera's patronage came from the Westchester area, your view could be that the Paradise and the La Tijera are not competitive, right?

The Court: Now; wait a minute. You used the word competitive. Let's use substantially competitive. We are talking about substantial competition. We all agree there may [2109] be a little competition. There may be a few people come, but where do we come into the question of substantial.

Mr. Mitchell: I think it is his view, and I know it is his view, if 50 per cent of La Tijera's patronage came from the Westchester area, your view is that the Paradise and the La Tijera are not substantially competitive, is that right?

The Witness: I don't know that I mentioned the 50 per cent, but it is my belief that the Paradise and the La Tijera are not substantially competitive. [2110]

\* \* \* \* \*

Q. (By Mr. Mitchell): Now, what you mean—what you mean is, Mr. Lehman, that the La Tijera and the Paradise would not be substantially com-

(Testimony of Sidney Lehman.)

petitive even if 50 per cent of the La Tijera's patronage came from the Westchester area. Isn't that what you mean?

A. Well, I think we proved that the theatres weren't competitive when we both played *Born Yesterday* and we both did good business.

Mr. Mitchell: I ask that the answer be stricken.

The Court: The answer will be stricken. Answer the question yes or no. Read the question, Mr. Reporter.

(Question read.)

The Witness: I don't believe that the La Tijera and the Paradise Theatre are substantially competitive.

Mr. Mitchell: I move the answer be stricken and the witness required to answer the question.

Mr. Corinblit: I think Mr. Mitchell is badgering the witness at this stage, and I object to it for that reason.

The Court: Now, just a minute, just calm down.

This is a hypothetical question and I think Mr. Mitchell is entitled to an answer.

Your understanding of substantial competition and my understanding of substantial competition may be different—probably is different because I haven't found any two people who will agree as to what substantial competition means.

Now, all he is trying to find out is what you mean by "substantial competition".

Now, do you mean it has to be 50 per cent that one theatre has to take from another—that is one

(Testimony of Sidney Lehman.)

theatre takes 50 per cent of the patronage of another theatre before it becomes substantially competitive.

The Witness: He mentioned "if" and I don't like guesswork.

The Court: I know, but this is pure guessing. We have to guess.

The Witness: If one theatre took 50 per cent of the patronage of another theatre they would be substantially competitive.

The Court: How about 25 per cent?

The Witness: No, I don't believe you would call that substantially competitive.

The Court: Where is the breaking point between 25 and 50 per cent?

The Witness: I would say around 33 $\frac{1}{3}$  per cent.

The Court: There is no substantial competition in your opinion unless one theatre takes 33 $\frac{1}{3}$  per cent of the patronage of another theatre?

The Witness: Or more.

The Court: Is that satisfactory?

Mr. Mitchell: I would like to show him his testimony.

Q. I would like to show you your testimony at page 31, lines 20 to 26, and ask you if you so testified. You can answer that yes or no.

A. Yes, I testified to that.

Mr. Mitchell: With your permission, your Honor, I would like to read that portion to the jury.

The Court: You may do so.

Mr. Mitchell: "Q. It wouldn't make any differ-

(Testimony of Sidney Lehman.)

ence to your opinion with respect to competition between the La Tijera and the Paradise, for example, if as much as 50 per cent of the La Tijera patronage came from the Westchester area you would still hold the opinion that they were not competitive?

“A. That is right.” [2114]

\* \* \* \* \*

The Court: This is a difficult question as to whether or not these theatres are in competition or substantial competition. What do you mean by substantial competition? I don't know. It is purely a question of fact and you are the ones who are going to have to determine that, not me.

You don't have to take the testimony of this witness or any other witness but take the testimony of all the witnesses and consider the reasons they give as to why they believe the [2116] theatres are in competition or substantial competition or are not in competition or substantial competition, and determine in your own minds whether or not the Paradise Theatre was in substantial competition with these other theatres.

Mr. Mitchell: And your Honor, in determining the question of conspiracy, the matter of substantial competition may not be determined.

\* \* \* \* \*

Q. (By Mr. Mitchell): After you started buying and booking for the Paradise Theatre, Mr. Lehman, Warner Bros. offered you the opportunity to bid for each 7 day availability that came off the Warner Bros. production line, isn't that right?

(Testimony of Sidney Lehman.)

A. I believe so, yes.

Q. And the same is true as to Universal, isn't that right?      A. Yes.

Q. And the same is true as to Paramount, isn't that right? [2117]      A. Yes.

Q. And Loew's told you that any time you wanted to bid for their pictures, you could do so, isn't that right?      A. Yes, on the 7 day.

Q. On the 7 day availability, yes. And these companies, at least Universal and Paramount and Warners all offered you the opportunity to bid the 14 day availability, isn't that right?

A. The opportunity to buy or bid for it?

Q. Well, bid for it.      A. Yes.

The Court: Mr. Mitchell, do I understand from that question that there was a different policy relative to 14 and 7 day availabilities? In other words, you had to bid on 7 but you could negotiate on 14?

Mr. Mitchell: There was bidding on the 14 day run also.

The Court: They didn't say you have to bid on 7 day but we will negotiate on 14 day?

Mr. Mitchell: No. They said if you want a 7 day run you can bid for that. They said if you want a 14 day run you can bid for that. And that was done under different plans which your Honor is aware of.

The Court: I got a little different meaning from your question and that is why I broke in.

Q. (By Mr. Mitchell): You licensed quite a number of 14 [2118] day runs, didn't you?



(Testimony of Sidney Lehman.)

A. Yes, sir.

Q. And some of those you licensed by bidding?

A. No, sir.

Q. You licensed all of the 14 day runs then that you got by negotiation?

A. I wouldn't want to—I believe all of them, but there may have been one or two, but I believe all of them, the way that expression that I licensed them, I licensed practically all of them on negotiation.

Q. In some instances, the distributors didn't get an adequate bid and said that they were ready to negotiate for the picture?

A. I wouldn't know about that.

Q. They just came and told you they were ready to negotiate for the picture?      A. Yes.

Q. And the 21 day runs you got by negotiation?

A. Yes.

Q. Now, you spoke about out-booking the Fifth Avenue—the picture Santa Fe. The Fifth Avenue on that occasion played Santa Fe and Fury of the Congo both on 7 day availability, isn't that right?

A. Yes.

Q. And the Paradise played Santa Fe and Father's Little [2119] Dividend, isn't that right?

A. Yes, sir.

Q. That was a better bill than the Fifth Avenue had?

A. Well, Father's Little Dividend was on a 27 day availability. The reason that the Fifth Avenue pulled the picture was the fact that we were permitted to play it day and date with them.

(Testimony of Sidney Lehman.)

Q. And you had a better bill?

A. Well, when you say "A better bill," I don't know. We had a bill where one picture had played in the area a few weeks prior to the opening of our show and therefore it eliminated a certain number of people who wouldn't come to see *Father's Little Dividend* the second time in order to see *Santa Fe*.

Q. But when you say you "out-booked" the *Fifth Avenue*, what did you mean?

A. Oh, I don't know, just that it is an expression that I use. But I don't think that it means too much one way or the other. I think the reason that the *Fifth Avenue*—

Q. I am not asking you to speculate on the reason. I am asking you to tell me what you mean when you say you out-booked them.

A. Well, *Santa Fe* and *Fury of the Congo* are two action pictures. Now, that would only interest people who were looking for red blooded entertainment. [2120]

Now, *Santa Fe* and *Father's Little Dividend* might appeal more to a man and his wife and their family because the wife and daughter would probably rather see *Father's Little Dividend* than *Fury of the Congo* or *Santa Fe*. The man and his son would prefer to see *Santa Fe* and it makes a rounded show to my estimation, anyway.

Q. Well, in your opinion yours was a better double bill than the *Fifth Avenue* double bill?

A. Yes, with the reservation that the picture *Father's Little Dividend* had played the area before

(Testimony of Sidney Lehman.)

and naturally that eliminated just so many people who wouldn't see it the second time.

Q. Now, with respect to Paramount, Mr. Lehman, your first request made to Paramount to negotiate was this form letter of March 26, 1951—the Born Yesterday letter, is that right?

A. No, sir.

Q. That was your first written request?

A. Well, I don't know about that. You see, when we assumed the buying and booking of the Paradise Theatre, there is a certain form that the Paradise Theatre is requested to sign in order that the film company may know that we are the accredited buyers and bookers.

Now, when that form was either taken or sent to the company we may have informed them at that time just how we [2121] wanted to buy and book.

Q. All right. At the time you wrote your letter of March 26, 1951, to Mr. Taylor, the so-called Born Yesterday letter, you had been, prior to that, you had been playing on a 21-day availability, hadn't you?      A. Yes, I believe so.

The Court: May I ask a question, Mr. Mitchell?

Mr. Mitchell: Yes.

The Court: In your duties as a buyer and booker, do you give any consideration as to whether or not the profit of the theatre—that the theatre is making a profit. Do you consider the policy of the theatre, whether it is better to try to run on a 7 day availability or to run upon a 21 day availability or run upon a later availability or lower admission

(Testimony of Sidney Lehman.)

prices, or do you just give consideration to the fact that you want to buy and book the best pictures available?

The Witness: No, sir. I have to be cognizant of the profit by virtue of the fact that if I buy pictures that don't bring in enough people to the box office, I will be fired. [2122]

The Court: Well, I know, but who establishes the policy. Now, you have got 21 day. When you first started buying and booking, was the theatre on a 21 day policy?

The Witness: Your Honor, I don't know very much about what happened prior to our coming into the picture.

The Court: When you came into the picture, what were they buying? Weren't they trying to get pictures on 7 day or 21 day?

The Witness: The only thing that they could get at that time was 21 day pictures.

The Court: When you came in, was that what they were playing?

Mr. Mitchell: He means without bidding for them.

Q. You mean without bidding for them?

The Court: That is upon negotiations.

The Witness: Your Honor, I don't know even the name of the picture that played prior to the day I took over the theatre, and I am sincere about that.

The Court: When you came in they were playing pictures on 21 days, is that correct?

The Witness: I don't know.

(Testimony of Sidney Lehman.)

The Court: When you first bought a picture did you buy it on 21 days?

The Witness: Yes, sir.

The Court: How long did you continue buying on 21 [2123] day availability?

The Witness: About two to two and a half months.

The Court: What made you change from the 21 day availability to another availability?

The Witness: Well, your Honor, we were trying to get 7 day availability pictures, but we were unsuccessful. The film companies wouldn't give them to us.

Mr. Mitchell: He doesn't mean they wouldn't give them to him. He means they wouldn't give them to them unless you bid, is that right?

Mr. Corinblit: Would your Honor instruct the jury that what Mr. Mitchell says is not evidence?

The Court: I will instruct the jury that you are not to consider the statements of counsel as evidence. That includes opening statements, arguments made between counsel and arguments made between counsel and the court. That is not evidence. The only evidence you are to consider is the evidence you get from the witness stand.

Mr. Mitchell: Your Honor, in view of these statements, I would like to say that he just got through saying that all these companies offered their pictures by bid.

The Court: I will try to clarify that.

Mr. Mitchell: Please, your Honor.

(Testimony of Sidney Lehman.)

The Court: When you say you couldn't get the pictures, you mean you couldn't get them on a negotiation policy? [2124]

The Witness: Yes.

The Court: It would have been possible for you to bid, and if you had been the successful bidder, you could have gotten the pictures?

The Witness: Yes, sir. [2125]

\* \* \* \* \*

Q. (By Mr. Mitchell): In your Born Yesterday letter to Paramount, you said, "I would like to negotiate for your pictures September Affair and The Redhead and the Cowboy to play 7 days after first run Los Angeles closing, or, if the request is too late for this availability, I would like to negotiate with you for your next release to run 7 days after Los Angeles first run closing."

You had a conversation with Mr. Taylor, the branch manager of Paramount Exchange, and he told you he had already licensed September Affair and The Redhead and the Cowboy, is that right?

A. Yes.

Q. Then you mentioned a picture named Molly. That is a picture that you didn't attempt to license in your theatre on any availability, isn't that right? You didn't play it on any availability? [2127]

A. He didn't offer it to me.

Q. You are the buyer. Didn't you go around and try to get Molly from him on any availability?

A. He is the salesman and he is supposed to come and sell it to me.

(Testimony of Sidney Lehman.)

Q. You sit back and wait, is that your policy?

A. Yes, sir.

Q. I see. You don't try to get the pictures, then?

A. A salesman calls on a buyer. A buyer doesn't run after a salesman as a rule, Mr. Mitchell.

Q. That is the way you operate? A. Yes.

Q. Molly, that picture named Molly is what is known in the trade as a dog, isn't that right?

A. Yes, sir.

Q. And a dog is a very poor picture in the trade, isn't it?

The Court: You don't want to put anything in front of that dog, do you?

Q. (By Mr. Mitchell): Is that right?

A. You said Molly is a dog?

Q. That is what you said, isn't it?

A. I agree with you.

Q. What do you mean by that?

A. What do I mean by a dog? [2128]

Q. By calling Molly a dog.

A. I would say it is a picture that isn't of the highest grossing caliber.

Q. That is what is called a British understatement, isn't it, isn't that right? A. Yes.

Mr. Corinblit: Whether it is an understatement or a British understatement.

Q. (By Mr. Mitchell): The next picture——

The Court: Just a minute, Mr. Mitchell. When you refer to a picture as a dog or being an undesirable picture, you are referring only to it as a box office attraction.

(Testimony of Sidney Lehman.)

The Witness: Yes, sir.

The Court: That is the money that comes into the box office.

The Witness: Yes, sir.

The Court: You may have a very fine picture from an artistic standpoint, but yet it would be a dog because it didn't draw anything at the box office.

The Witness: Yes, sir.

The Court: All right.

Mr. Corinblit: It might be a turkey, your Honor, if it was not a dog.

Q. (By Mr. Mitchell): The next picture, Samson and Delilah, that picture Paramount licensed to you? [2129] A. Yes, sir.

Q. By negotiation? A. Yes, sir.

Q. Not bidding, negotiation. A. Yes, sir.

Q. They rejected the bids that they got on that, did they tell you that? A. No.

Q. They just asked you if you would like to buy it? A. Yes, sir.

Q. All right. Now, the next picture of Paramount is Lemon Drop Kid. I would like to ask you to look at a memorandum of Al Taylor's which has been marked for identification as defendant Paramount's Exhibit E-19 and see if that refreshes your recollection about The Lemon Drop Kid. [2130]

Mr. Corinblit: This is a memorandum of Mr. Taylor, is that correct?

Mr. Mitchell: Emphasize that so—the judge understands.



(Testimony of Sidney Lehman.)

(Document handed to the witness.)

Q. (By Mr. Mitchell): Now, do you remember that on *The Lemon Drop Kid* that Mr. Taylor came to you and asked you if you were interested in negotiating a deal for your theatre?

A. Well, frankly I don't, but it is possible that he did without my recalling it.

Q. Do you remember him telling you that—let us go back for just a minute.

Paramount was offering at that time two seven-day runs in the area? A. Yes.

Q. Do you remember that on *The Lemon Drop Kid* him telling you that the Academy had won one of the bids—it had won the bid on one of the runs on *The Lemon Drop Kid*? A. No, I don't.

Q. I see. Did you make a memorandum of that conversation?

A. I couldn't very well if I don't remember it.

Q. I understand, but do you have in your files a memorandum of that conversation with Mr. Taylor? [2131]

Mr. Corinblit: There is no testimony there was such a conversation, Mr. Mitchell. I object to the question on the ground it assumes a fact not in evidence.

The Court: Overruled. So far as you know, do you have in your file any memorandum of any conversation you had with Mr. Taylor in regard to this picture?

The Witness: No, because all my files should be here. There isn't anything that I didn't send down.

\* \* \* \* \*

(Testimony of Sidney Lehman.)

Q. (By Mr. Mitchell): At the recess, Mr. Lehman, we were talking about the Paramount picture Lemon Drop Kid. A. Yes, sir.

Q. I want to show you Plaintiff's Exhibit 3-L, a document taken from your files, and ask you if you recognize it.

The Court: Is that in evidence?

Mr. Mitchell: No, sir, it is not. It is marked for identification.

The Witness: Yes, I recognize it.

Mr. Mitchell: I will offer it in evidence.

The Court: It may be received in evidence.

The Clerk: Is that one of your exhibits or as the plaintiff's exhibit?

Mr. Mitchell: It is his document. I will offer it with the plaintiff's number. It doesn't make any difference what number it has.

The Clerk: Plaintiff's Exhibit 3-L.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 3-L.)

Mr. Mitchell: First we will identify this and then I can read portions of it.

Q. Mr. Lehman, this is a request for bids sent to you by Paramount for Lemon Drop Kid on the 14 day availability, right? A. Yes.

Mr. Mitchell: I would like to read portions of it, if I may, to the jury.

This document is headed Paramount Film Distributing Corporation, request for offer, and it is dated April 16, 1951. It is addressed to Harry L. Rackin—

(Testimony of Sidney Lehman.)

Q. Mr. Rackin in your partner?

A. Yes, sir.

Q. And Earl J. Johnson. Mr. Johnson was the buyer for the La Tijera, wasn't he? A. Yes.

Q. And Marco Wolff and Fred Stein—he was the buyer [2134] for United Artists?

A. Yes.

Q. Bert Pirosh. Gus Diamond. Who is Gus Diamond?

A. Gus Diamond was and still is the buyer for the Century Drive-In Theatre and the Vermont Drive-In Theatre. I don't know if he had the Studio at that time or not.

Q. Max Laemmle, he is the buyer for another drive-in?

A. No. That would be the Ritz Theatre in Inglewood.

Q. The Ritz Theatre in Inglewood. Jack Berman?

A. I guess Jack Berman at that time was the owner of Centinela Drive-In Theatre.

Mr. Mitchell: This document reads:

“We invite each of you to submit any offers you may desire to make with respect to the motion picture Lemon Drop Kid for the run 14 days following first run Los Angeles and Hollywood closing.”

Underneath that it says, “Awarded Academy and Southside Theatres on 7 day availability.” There is a list of theatres to which this offer is made.

Q. Now, you knew, then, at that time that in respect of the 7 day availability the two Paramount

(Testimony of Sidney Lehman.)

7 day runs had been awarded to the Academy and Southside?

Mr. Corinblit: Just a minute, your Honor. What time are you referring to, counsel? I will object to the question as ambiguous, your Honor. [2135]

Mr. Mitchell: At the time of the receipt of this request for offer.

Mr. Corinblit: Whenever it was received.

Mr. Mitchell: It is dated April 16, 1951.

Q. At or about that time, as stated in the request for offer, you knew that the Academy and Southside had bought the 7 day run, isn't that right?

A. I may have. I don't particularly recall, but I may have.

Q. Well, you saw this document?

A. I don't know that I did. That is not my handwriting.

Q. It is Mr. Taylor's signature on here.

A. Where it says "File Paradise" is not my handwriting.

Q. You actually bought the 14 day run, didn't you?

A. I don't recall. I would have to look at my records to find out. [2136]

Q. Then I would like to show you a document marked for identification, Paramount Exhibit E-17, dated May 7, 1951, two or three weeks later, and ask you if you sent that document to Mr. Taylor?

A. Yes, I sent it to him.

Mr. Corinblit: May I see it, Mr. Mitchell?

(Testimony of Sidney Lehman.)

Mr. Mitchell: Yes, I am sorry.

I offer this document in evidence, your Honor.

The Court: It may be received in evidence.

The Clerk: Paramount Exhibit E-17 in evidence.

(The document heretofore marked Paramount Exhibit E-17, was received in evidence.) [2137]

\* \* \* \* \*

Q. (By Mr. Mitchell): Now, in view of this April 16th request for offers specifying that this picture had at that time been awarded to the Academy and Southside, you knew on May 7, of course, that the 7 day run of Paramount was no longer available, didn't you?

A. No, I don't believe I did.

Q. All right. Now, on or about June 5, Mr. Taylor told you that the picture Appointment With Danger was open for Paradise to negotiate for it on a 7 day run. Do you remember that?

A. Well, I remember discussing it with him. I don't remember the exact date.

Q. I am talking about negotiations and not bids.

A. Yes.

Q. You remember offering him 35 per cent for the picture? A. Yes, I do.

Q. And you remember when you called Mr. Taylor he told you that the picture had been awarded to the—or, had been sold to the Academy and the Southside and that you couldn't have it inasmuch as they were only willing to license two 7 day runs, do you remember that? [2138]

(Testimony of Sidney Lehman.)

A. I remember that, but there is more to it than that.

Q. Yes, there is. You remember that much, do you?      A. Yes, I do.

Q. We will get to the rest of it. Then you remember the next day that he called and told you that there had been a change in the playing of the picture and that you could have Appointment With Danger on the 7 day availability but that you would have to pay 40 per cent for it?      A. Yes.

Q. That was a negotiation?      A. Yes.

Q. That is what you wanted to do?

A. Yes.

Q. Was negotiate?      A. Yes.

Q. And then he sent you a contract covering Appointment With Danger, didn't he, asking you to sign it?      A. I don't recall.

Mr. Mitchell: Could I have Defendant Paramount Exhibit E-21, please.

Q. I will show you a letter dated June 6, 1951, from Mr. Taylor to you and ask you if you recognize that?

A. Yes, I recognize the letter.

Q. And that refreshes your recollection?

A. I believe so. [2139]

Q. So that you can now state on the picture Appointment With Danger, Mr. Taylor sent you a contract for a 7 day availability for your signature?      A. Yes.

Q. Then later on he told you that the picture

(Testimony of Sidney Lehman.)

would not be available to you until June 20th. Do you remember that?

A. I remember something about it.

Q. And you told him you already had the—I guess it was the Columbia picture *Brave Bulls* set for that date?

A. Yes, sir.

Q. And that you couldn't play *Appointment With Danger*?

A. Yes. [2140]

The Court: May I ask the witness a question?

Mr. Mitchell: Certainly.

The Court: Suppose you make a bid upon a picture and you get it and then you discover you can't play it. Do you have to pay for the picture anyway?

The Witness: Yes, sir.

The Court: On what basis? If you have got it on a percentage, and you don't play it, there is no percentage. How do you work out a basis for paying?

The Witness: The companies generally take a number of pictures and strike off an average and that is what you will pay for your percentage of the average business they feel you should have done on that basis.

The Court: So if you bid for a picture and you get it and for any reason you can't play it—

The Witness: You are still obligated.

The Court: The distributors won't take it back and relieve you of the contract?

The Witness: No, sir.

The Court: You have to pay for it.

The Witness: Yes, sir.

(Testimony of Sidney Lehman.)

Q. (By Mr. Mitchell): You don't mean to say you bid for Appointment With Danger?

A. No, I didn't bid on that picture.

The Court: I am asking the difference between [2141] negotiation and bidding. I wanted to know if they bid for a picture and got it whether they had to pay for it or not.

Q. (By Mr. Mitchell): In June 1951, the Paramount picture Last Outpost became available on the 7 day run, isn't that correct?

A. I don't know for sure. It is possible.

Q. Let me show you a handwritten memorandum in the handwriting of Mr. Taylor here and see if this doesn't refresh your recollection as to whether that picture was offered to you by negotiation.

Mr. Corinblit: Before you answer, Mr. Lehman, I would like to take a look at the document.

Mr. Mitchell: I'm sorry.

Q. Does that refresh your recollection that the picture Last Outpost was offered to you by Mr. Taylor for negotiation for a 7 day run?

A. No, it doesn't. It may have been offered, but I don't recall it.

Q. You don't recall.                   A. No, sir.

Q. You made no memorandum about that?

A. Not that I can recall.

Q. Another picture in the summer of 1951, in July 1951, Paramount picture, available on the 7 day run, was Peking Express. I will also show you a memorandum of Mr. Taylor's and [2142]



(Testimony of Sidney Lehman.)

see whether that refreshes your recollection as to whether you were given an opportunity to negotiate for the 7 day run on that picture.

A. It is possible, but I just don't recall it.

Q. You didn't make any memorandum about that? A. Not if I don't have one.

Q. There was also a picture available, distributed by Paramount about that time, called Trio. Trio was a so-called art picture? A. Yes, sir.

Q. By an art picture you mean a picture of a type that appeals to only a limited class of people?

A. Yes, sir.

Q. You were not interested in art pictures for your theatre?

A. I don't think the Paradise has that trade.

Q. The answer is that you weren't interested in that type picture? A. No.

Q. Another Paramount picture available on a 7 day run at that time was called War Path. I will show you a memorandum of Mr. Taylor's on War Path and see whether that refreshes your recollection that the picture was offered to you and you told Mr. Taylor that the Paradise was already booked for that date and couldn't use it—offered to [2143] you by negotiation, for negotiation.

A. It is possible. I don't recall it.

Q. And you didn't make any memorandum of it?

A. No, sir, not if it isn't here.

Q. I call your attention to another Paramount picture, Here Comes the Groom. Do you remember that picture? A. Yes.

(Testimony of Sidney Lehman.)

Q. Do you remember that you negotiated in your style a deal with Paramount for the 7 day run of that picture?

A. I have to refer to my records.

Mr. Corinblit: On the 7 day availability?

Mr. Mitchell: That's right.

Q. I will show you here a memorandum of Mr. Taylor's dated September 7, 1951, and ask you whether that refreshes your recollection that the picture was offered to you by negotiation and that you made an offer and Paramount accepted it.

A. Excuse me. Wasn't this period up to August 1951?

Mr. Corinblit: What is the date of that?

The Witness: September 7.

Mr. Corinblit: Yes. Mr. Mitchell, you appreciate that this picture was not played in the Paradise during this period.

Mr. Mitchell: Well, it was offered to him and he purchased it by negotiation during this period, I think.

Q. Didn't you? Isn't that a fact? [2144]

A. May I look at this?

Q. Sure. That is what I want you to do.

A. Thank you. I am looking for a date on here.

Q. That is a typewritten copy of this one.

A. This is the date.

Q. Do you have any recollection of negotiating with Paramount for *Here Comes the Groom* and buying the picture on a 7 day availability?

(Testimony of Sidney Lehman.)

A. No, frankly, I don't, but if I could refer to my records, I would.

Q. What records do you need?

Mr. Corinblit: These are the records right here, counsel.

Q. (By Mr. Mitchell): Aren't you willing to say now, Mr. Lehman, that on numerous occasions Paramount offered you 7 day runs by negotiation?

A. Well, those that they offered me, I was very happy to take advantage of.

Q. And that they did that on numerous occasions?

A. On the few occasions you mentioned, yes.

Q. At least?

Mr. Corinblit: Just a minute, your Honor. I object to that as speculative and a conclusion. The witness has testified on those occasions they were offered. I don't know what the—— [2145]

Mr. Mitchell: A few moments ago you didn't even say that. I thought maybe he would say the rest.

The Court: Read the question.

(Record read.)

Mr. Corinblit: And unintelligible.

Mr. Mitchell: Well, read the preceding question.

(Record read.)

Q. (By Mr. Mitchell): On at least those occasions?

The Court: Objection overruled.

The Witness: Yes.

Mr. Mitchell: That's all. [2146]

(Testimony of Sidney Lehman.)

Cross Examination

Mr. Johnston: Mrs. Smith, may I have Exhibit 18-G, please. I believe you put this in evidence, Mr. Corinblit.

Mr. Corinblit: Yes.

Q. (By Mr. Johnston): I show you a letter addressed to you, Mr. Syd Lehman, which has been put in evidence, from Mr. Clyde Eckhardt of Fox, dated April 10, 1951.

There is no question in your mind but what you received this document, is there, Mr. Lehman?

A. May I read it?

Q. Certainly.

A. Thank you. Yes, I received that letter. [2147]

\* \* \* \* \*

Q. (By Mr. Johnston): Now, in your opinion based on your experience in this business, isn't it true that a clearance of the Loyola Theatre over the Paradise Theatre of 21 days is reasonable?

A. No, sir.

Q. Would you say it is unreasonable?

A. Yes, sir. [2748]

Q. I am going to call your attention to your deposition which you gave—may we have the original, Mr. Corinblit?

Mr. Corinblit: Yes. May I read what you are going to show the witness?

Mr. Johnston: Yes, certainly. Starting at line 17 on page 324 through line 4 on page 327.

Mr. Corinblit: All right.

Q. (By Mr. Johnston): I will place before you

(Testimony of Sidney Lehman.)

the portion of the deposition, Mr. Lehman, which I would like to have you read and so you may get it again, I ask you to read on page 324, starting at line 17, through page 327, at line 4.

A. Do you want me to read this?

Q. To yourself.

A. Down to what line on 327?

Q. Line 4. A. Yes, I have read it.

Q. You so testified, did you not, on May 24th of this year? A. Yes.

Mr. Johnston: With the court's permission, I should like to read the indicated portion.

The Court: Very well.

Mr. Johnston: (Reading):

“Q. Now, Mr. Lehman, calling your attention to the Paradise and Loyola Theatres — and they are how far apart? [2149]

“A. Three city blocks.

“Q. Now, if either of those houses played on a first run basis, and I am speaking again of the period of 1950 and 1951, in your opinion would the house which played first run be entitled as a matter of reasonable protection to have 21 days clearance over the other house?”

And then Mr. Corinblit interposed an objection which, unless you want me to read, I will omit.

Mr. Corinblit: You can omit the colloquy between counsel.

Mr. Johnston: The witness answered:

“Well, if Loyola played a picture first run they would be entitled to a reasonable clearance.

(Testimony of Sidney Lehman.)

“Q. If the Paradise Theatre played a picture first run it would be entitled to a reasonable clearance over the Loyola, isn’t that right?”

And then Mr. Corinblit objected again, which I will omit.

The witness answered:

“Yes, that is correct.

“Q. It would work both ways” and the answer was, “Yes.”

“Q. Is it your opinion that the 21 day protection for either of the theatres would be unreasonable—would be reasonable or would have been reasonable in 1950 and 1951? [2150]

“A. Well, if I recall at the Paradise we never asked for any number of days clearance.

“Q. I am not asking you that, Mr. Lehman. I am asking you for your opinion as an expert and as an experienced man in this business——”

And then Mr. Corinblit and Mr. Westbrook indulged in a discussion which I won’t bother to read, and I participated, too, I see.

Then the witness asked to have the question re-read, which the reporter did, and then the witness, after this discussion, said:

“Well, that is more or less of a matter of guess work. Some people might consider 14 days clearance, some people might consider 21 days clearance.

“Mr. Johnston: Let me put it this way: In other words, you wouldn’t consider it unreasonable in your opinion, is that right?

“The Witness: You are now talking about be-

(Testimony of Sidney Lehman.)

tween the Paradise and the Loyola," and I said:

"Just those two theatres, yes.

"The Witness: I would say it is not unreasonable." [2151]

\* \* \* \* \*

Q. (By Mr. Johnston): Now, on direct examination, if I heard you correctly this morning, you mentioned in some detail a conversation you had with Mr. Clyde Eckhardt. I believe that was some time in 1951, on the occasion on which we took your deposition or I should say I questioned you on May 24th of this year. You didn't remember what was said at that conversation, did you?

A. (No answer.)

Q. Maybe I should show you the deposition.

A. I wish you would. [2152]

Mr. Johnston: I am going to refer here to page 332, Mr. Corinblit, for your edification, particularly lines 18 to 22.

Q. (By Mr. Johnston): Would you turn to that, Mr. Lehman? You have that before you?

A. Yes. 332?

Q. Page 332, lines 18 to 22. A. Yes.

Mr. Johnston: Could I read the portion indicated, your Honor?

The Court: Yes.

Mr. Johnston: This won't be as long as the last.

Q. So that you can't remember anything as to any of the conversations you had with Mr. Eckhardt, Mr. Wall or Mr. Sudman with respect to product of the Paradise Theatre?

(Testimony of Sidney Lehman.)

A. No, not at this time.

Mr. Corinblit: Well, now——

Mr. Johnston: I beg your pardon?

Mr. Corinblit: At the top of page 332 you asked a question pertaining to the same subject, Mr. Johnston.

Mr. Johnston: Yes. I asked quite a few pertaining to that and collateral subjects all the way through the deposition.

Mr. Corinblit: Would you like to read that question and answer? [2153]

Mr. Johnston: I will read the whole deposition if you want. If you will accord me the privilege of going ahead in my own way, I would appreciate it.

Mr. Corinblit: Then, your Honor, I will object to this procedure. Put it this way. I would like the privilege again here, where counsel pulls out a question from the middle of the page, to have the opportunity of reading a question and answer in order that the jury may have all the information. I can't understand this objection to having the full matter presented.

The Court: Do you want to read part of the record?

Mr. Corinblit: Yes, sir, just a question and answer.

The Court: Go ahead and read it.

Mr. Corinblit: Thank you, sir.

Mr. Johnston: Well, now, if you read part, then I suppose I can read some more, too, Mr. Corinblit?



(Testimony of Sidney Lehman.)

Mr. Corinblit: Yes, sir.

Mr. Johnston: Is that all right?

Mr. Corinblit: That's all right. There is only one question I am interested in here, although there are a great many things you covered. Top of 332 is what I had reference to.

“Q. (By Mr. Johnston): I am aware of the fact you bought them. I am simply interested in [2154] knowing if you can tell me what you remember of what you said and what he said.

“The Witness: No, but I do recall that on a number of occasions where pictures did not play the Loyola Theatre that I discussed same with either the three gentlemen I mentioned or one or two of the three and in some cases we made deals.”

Mr. Johnston: Then I will go ahead, if I may, Mr. Corinblit, and I will read line 11 on the same page.

“Q. Can you remember anything more specific than that with respect to these conversations?

“The Witness: Not at this moment.”

And then I asked the question, “You have no notes that would refresh your recollection as to that?

“No. If they are not here, I don't have them.”

Q. (By Mr. Johnston): Do you have any notes on that? You had a number of other notes and I wondered if you might have on this?

A. Whatever notes I had, Mr. Johnston, are here.

(Testimony of Sidney Lehman.)

Q. You don't recall making a memorandum of this conversation, do you?

A. No, not if there isn't a memorandum on it.

Mr. Johnston: Mr. Corinblit, I take it inasmuch as you haven't produced one, there isn't one, to your knowledge?

Mr. Corinblit: You have all the memoranda, counsel.

Mr. Johnston: I don't have any.

Mr. Corinblit: In the files. I might say you have had them for about six months.

Mr. Johnston: Well, I have never had them.

The Court: Let's get the record straight. You have had access to them.

Mr. Johnston: They were in the file, I think, but I didn't see that one, if there was one.

Q. Now, were you familiar in general, Mr. Lehman, with the pictures played at the Loyola Theatre starting with the first of the year 1950 up through September of—I beg your pardon—starting with the first of the year 1951—that is when you started buying and booking for the Paradise Theatre, isn't it? [2156] A. Yes.

Q. About that time? A. Yes.

Q. Are you familiar with the pictures that played at the Loyola Theatre in general from that period up through September of the same year, 1951? A. I would think so.

Q. Is it your best memory that during all of that period the top half of the bill at the Loyola was a Fox picture? A. I would believe that.

(Testimony of Sidney Lehman.)

Q. I have here, and this may help you, if you wish to refer to it, a play-off for the period I am asking you about. In fact, it runs to the end of the year——

The Court: Maybe Mr. Corinblit will stipulate.

Mr. Corinblit: Your Honor, not only can we stipulate that, but in evidence in this case is a complete comprehensive play-off of the Loyola, and it was stipulated to. I don't understand that there is any problem on it.

The Court: You will stipulate the top half of the bill was Fox pictures during this period?

Mr. Corinblit: Your Honor, if you will let me take a look at this exhibit first.

Mr. Johnston: Would you like to look at this one? It may save a little time. [2157]

Mr. Corinblit: Here it is. You are limiting the question to what period?

Mr. Johnston: For the present, just starting with the first of the year, January 1951, through September of the same year.

Mr. Corinblit: You want to cover through September 1951? No, sir. I will not so stipulate. The picture *Cyrano De Bergerac* played July 27 to 8-7-51, and that was a United Artists picture.

Mr. Johnston: What was the date?

Mr. Corinblit: 7-27 to 8-7-51.

Mr. Johnston: You are right.

Mr. Corinblit: Thank you.

Mr. Johnston: Is there any other correction you wish to make as to my statement, Mr. Corinblit?

(Testimony of Sidney Lehman.)

I see one here myself I overlooked, a Republic picture, Fighting Coast Guard, something like that.

Mr. Corinblit: Yes, sir. I believe, according to our schedule, those two are the two top pictures.

Mr. Johnston: Isn't it your memory, Mr. Corinblit, as long as we are stipulating, that *Cyrano* had played at the Fine Arts Theatre on Wilshire Boulevard on a first run basis prior to its exhibition at the Loyola Theatre?

Mr. Corinblit: I don't have any recollection on that subject. I think we can check it, however, by [2158] examining the play-off we put in evidence.

Mr. Johnston: Well, we can leave that in abeyance, perhaps.

Mr. Corinblit: All right.

Mr. Johnston: So with those two exceptions, then, I take it the stipulation is that Fox product was played exclusively on the top half of the bill for the period I inquired about.

Mr. Corinblit: Subject to only one matter. I don't think it is too important. Subject only to the question as to whether any of these features that are listed here below first feature are top features. I don't believe they are.

Mr. Johnston: We will go into that and maybe we can get some testimony on that.

Mr. Corinblit: I will stipulate subject to that possible exception.

Mr. Johnston: Now, that is the Republic picture—what was the name of that? *Captain Fabian*?

Mr. Corinblit: *Fighting Coast Guard*.

(Testimony of Sidney Lehman.)

Mr. Johnston: Fighting Coast Guard, you are right, and *Cyrano De Bergerac*, a United Artists picture.

Q. (By Mr. Johnston): Do you recall the picture produced and distributed by Allied Artists called *Short Grass*? A. Yes, I do.

Q. Do you recall that that played on the second [2159] half of the bill at the Loyola in January of 1951?

Mr. Corinblit: We will stipulate to that, counsel. It is in the exhibit.

Mr. Johnston: All right. Thank you.

Q. Do you recall making any attempt to license that picture, the Allied Artists picture, *Short Grass*, for first run exhibit at the Paradise Theatre?

A. No.

Q. Do you recall the Monogram picture *Bowery Battalion*, which played at the Loyola Theatre on the second half of the double bill during February 1951?

Mr. Corinblit: Counsel, I have got to interrupt you here.

Mr. Johnston: Surely.

Mr. Corinblit: Does your record show *Bowery Battalion* played with another picture?

Mr. Johnston: It apparently played with *Call Me Mister*, as nearly as I recall, a Fox picture.

Mr. Corinblit: My schedule shows *Call Me Mister* February 9 to 15 and *Bowery Battalion* the 16th to the 20th. Is that an error in the schedule?

(Testimony of Sidney Lehman.)

Mr. Johnston: I think it is, according to my schedule.

Mr. Corinblit: All right.

Mr. Johnston: But apart from that, according [2160] to my schedule, they played at the same time, Mr. Corinblit. It played with the picture Call Me Mister from February 9 through February 20th.

Mr. Corinblit: All right. I will take that subject to correction.

Now, with respect to the question of whether or not there was an attempt to obtain Bowery Battalion, a Monogram picture, I would object to that as being outside the scope of this case. It is not a picture of one of the eight majors, not one of the defendants. There is no materiality.

The Court: You have had evidence of companies that were not parties defendant.

Mr. Corinblit: Yes, sir.

The Court: They objected to that and I overruled the objection.

*The Court:* But that has to do with the eight major companies, not with respect to minor companies.

The Court: Objection overruled. [2161]

Q. You recall the picture Bowery Battalion playing at the Loyola Theatre on the second half of the bill in February 1951?

A. I don't recall it, but if it played there that is it.

Q. You do recall the picture?            A. Yes.

(Testimony of Sidney Lehman.)

Q. You made no attempt to license that picture for the Paradise Theatre first run, did you?

A. Well, I couldn't very well have——

Q. Just a minute. I simply asked you for the moment if you made any attempt to license a picture for first run exhibition in the Paradise Theatre.

A. No.

Q. Do you remember the Eagle-Lion picture Naughty Arlette which played at the Loyola Theatre as the second half of the double bill in February of 1951?

A. I remember the picture. I don't recall that it played the theatre.

Q. Do you recall making any attempt to license that picture for first run exhibition at the Paradise Theatre?

A. I couldn't have bought it if I wanted to.

Q. If you will answer my question I think we can conclude this case before Labor Day, maybe. I think the question can be answered yes or no. [2162]

A. No.

Q. Do you recall the Lippert production Fingerprints Don't Lie?      A. I recall the production.

Q. Do you recall its having played at the Loyola Theatre also in February 1951 as a second half of a double bill?      A. I don't recall.

Q. Do you recall making any attempt to license that picture for first run exhibition at the Paradise Theatre?      A. No.

Q. Do you recall the Republic picture Cuban

(Testimony of Sidney Lehman.)

Fireball which played as the second half of a double bill at the Loyola Theatre in March 1951?

A. I recall the picture.

Q. Do you recall making any attempt to license that picture for first run exhibition at the Paradise Theatre?      A. No.

Q. Do you recall the United Artists picture Mister Universe?      A. I recall the picture.

Q. Do you recall that that played at the Loyola Theatre on the second half of a double bill in April of 1951?

A. I don't recall that it played.

Q. Did you make any attempt to license Mister Universe [2163] for first run exhibition at the Paradise Theatre?      A. No.

Q. Do you recall the United Artists picture My Outlaw Brother which played at the Loyola as a second half of a double bill in April of 1951?

Mr. Corinblit: Pardon me, Mr. Johnston. May I interrupt you? Is it your information that that is a United Artists picture or Eagle-Lion picture?

Mr. Johnston: Is there much difference?

Mr. Corinblit: The schedule stipulated to shows it is an Eagle-Lion picture.

Mr. Johnston: If that is right, I will certainly accept that. My record shows it is a United Artists picture. My record could be wrong.

Q. If it is Eagle-Lion that doesn't alter your answer, does it?      A. No.

Q. Whether it was Eagle-Lion or United Artists you didn't try to get it in the Paradise first



(Testimony of Sidney Lehman.)

run, did you? A. No.

Q. All right. Now, did you testify you did not try to get My Outlaw Brother for first run at the Paradise?

A. Yes, I testified that I did not.

The Court: Will you keep your voice up, please?

The Witness: Yes, sir. [2164]

Q. (By Mr. Johnston): Well, you may not remember or do you remember if that played as a second half of a double bill at the Loyola in April 1951? A. No, I don't remember.

Q. Do you recall the United Artists picture When I Grow Up which played as a second half of a double bill at the Loyola Theatre in May of 1950?

A. I recall the picture, but I don't know if it played or not.

Q. Do you recall making an effort to get that picture for first run exhibition at the Paradise Theatre? A. No.

Q. Do you recall the United Artists picture The Long Dark Hall which played at the Loyola Theatre as a second half of a double bill?

A. I remember the picture.

Q. Do you recall having made an attempt to get that picture for first run exhibition at the Paradise Theatre? A. No.

Q. Do you recall the United Artists picture—pardon me. Do you recall the Republic picture Million Dollar Pursuit that played at the Loyola Theatre?

(Testimony of Sidney Lehman.)

A. I recall the picture, but I don't know that it played at the Loyola.

Q. You didn't try to get that picture first run for the Paradise? [2165] A. No.

Q. Do you recall the United Artists picture which played as the second half of a double bill at the Loyola, Circle of Danger?

A. I remember the picture.

Q. You didn't try to get that either for first run exhibition at the Paradise Theatre, did you?

A. No.

Q. Now, to shorten this I am going to read off a number of pictures down through September of 1951. And before I do, counsel, have I, according to your record there, asked Mr. Lehman about all of the second features that played the Loyola during the period in question?

Mr. Corinblit: Other than Fox—where they were a double feature with Fox?

Mr. Johnston: Yes. I am talking about the other pictures. Have I omitted any so far?

Mr. Corinblit: Not according to the record in evidence.

Mr. Johnston: Will you check me as I read off the group, and if there are any omissions will you be good enough to advise me of them?

Mr. Corinblit: Yes.

Mr. Johnston: Now, I am going to ask you as to all of these pictures which, according to my record [2166] here, played the second half of a double bill at the Loyola Theatre through September of 1951,

(Testimony of Sidney Lehman.)

and ask you with respect to all or any of them whether you attempt to license them for first run exhibition at the Paradise Theatre.

First I will ask you about the Republic picture Secret of Monte Carlo.

The Witness: No.

Q. (By Mr. Johnston): RKO picture Tarzan's Peril. A. No.

Q. Monogram picture According to Mr. Hoyle.

A. No.

Q. The Monogram picture Casa Manana.

A. No.

Q. The Republic picture Fugitive Lady.

A. No.

Q. The Monogram picture Let Us Go Native.

A. No.

Q. The Republic picture This Is Korea.

A. No.

Q. The United Artists picture Queen for a Day.

A. No.

Q. The Republic picture Sea Hornet.

Mr. Corinblit: You are beyond the period now, counsel.

Mr. Johnston: Oh, I beg your pardon. Does that include all that are on your list, the ones I just read?

Mr. Corinblit: Yes, it does.

\* \* \* \* \*

#### Redirect Examination

Q. (By Mr. Corinblit): Mr. Lehman, Mr. Mitchell and Mr. Johnston asked you some questions

(Testimony of Sidney Lehman.)

about the memoranda of conversations which you had. I think you testified as to a conversation with Mr. Fred Greenberg, that you had a memorandum about, is that correct? A. Yes.

Q. Is Mr. Greenberg alive? A. Yes.

Q. Who does he work for?

A. Warner Bros. Pictures.

Q. Now? A. Yes, sir.

Q. In Los Angeles? A. Yes, sir.

Q. With respect to Mr. Taylor, you had a memorandum of your conversation with Mr. Taylor. Is Mr. Taylor alive? [2169] A. Yes, sir.

Q. Where does he work?

A. Paramount Pictures.

Q. In Los Angeles? A. Yes, sir.

Q. Today, now? A. Yes, sir.

Q. With respect to Twentieth Century-Fox, you testified as to a conversation with Mr. Eckhardt, is that right? A. Yes.

Q. Mr. Eckhardt is not employed by Twentieth Century-Fox any more, is he, do you know?

A. Well, he is on pension. Whether that is called employable or not, I don't know.

Q. But he is in Los Angeles? A. Yes, sir.

Q. Lives here? A. Yes, sir.

Q. With respect to Metro - Goldwyn - Mayer, I think you testified you talked to Mr. Aspell, is that correct? A. Yes, sir.

Q. He works for Metro-Goldwyn-Mayer right now? A. Yes, sir.

Q. Here in Los Angeles?

(Testimony of Sidney Lehman.)

A. Yes, sir. [2170]

Q. With respect to RKO, you testified as to a conversation with Mr. Cohen, is that correct?

A. Yes, sir.

Q. Mr. Cohen is deceased? A. Yes, sir.

Q. With respect to Columbia, you testified to a conversation with Mr. Wayne Ball?

A. Yes, sir.

Q. Is he alive? A. Yes, sir.

Q. Works for Columbia? A. Yes, sir.

Q. In Los Angeles? A. Yes, sir.

Q. You testified about a conversation with Mr. Evidon? A. Yes, sir.

Q. Does he work for Columbia now?

A. No.

Q. Is he in Los Angeles, do you know?

A. Yes.

Q. In regard to United Artists, I think you testified to a conversation with Mr. Carnegie—no. I am not sure of that. A. Bert Pollard.

Q. Bert Pollard. Is he alive? [2171]

A. Yes.

Q. Works for United Artists? A. Yes.

Q. In Los Angeles? A. Yes.

Q. You testified to a conversation with a Mr. Frank Prince. A. Yes.

Q. Is Mr. Prince alive? A. Yes.

Q. Does he work for Fox now? A. Yes.

Q. Here in Los Angeles? A. Yes.

Q. I don't remember whether you testified to a

(Testimony of Sidney Lehman.)

conversation with Mr. Bert Pirosh but, of course, he has already been on the stand.

Mr. Johnston: And still alive.

Mr. Corinblit: Still alive.

Q. Now, Mr. Lehman, Mr. Mitchell asked you a little bit about the picture Santa Fe. Santa Fe was a Columbia picture, is that correct?

A. Yes.

Q. With regard to the pictures of the major companies during the period August 23 to September 18, 1951, Paradise [2172] didn't play any pictures day and date with the Academy, is that right?

A. No, sir.

Q. That is, they did not play? A. No.

Q. With respect to the 7 day availability and the theatre the Fifth Avenue, at any time did the Paradise ever play day and date on the 7 day availability with the Fifth Avenue Theatre?

A. Well, no. We never played day and date because they pulled Santa Fe.

Q. They pulled Santa Fe. What was the reason given?

A. Because we were playing the picture day and date with them.

Q. Let's get this clear. During the period when you took over, December up through Born Yesterday—well, you testified as to the conversations you initially had with the distributors when you requested first run, and if not first run, 7 days, and so forth? A. Yes.

(Testimony of Sidney Lehman.)

Mr. Mitchell: I object to that as being argumentative and leading.

Mr. Corinblit: All right.

The Court: Sustained.

Q. (By Mr. Corinblit): Now, Mr. Johnston also [2173] asked you some questions about the pictures that played the second feature at the Loyola.

A. Yes.

Q. Turning first to the picture—I think there was one picture from RKO, a picture called Tarzan's Peril. You testified to a conversation with Mr. Cohen about first run? A. Yes.

Q. In December 1950? A. Yes.

Q. And did anyone from RKO call you up and offer you Tarzan's Peril? A. No.

Q. With respect to United Artists pictures, the one or two, the few that played first run at the Loyola, you testified you talked to the United Artists people when you first took over? A. Yes.

Q. Did any representative of United Artists discuss with you playing those pictures first run in the Paradise? A. No.

Q. Turning to the pictures other than United Artists, other than RKO, when you play a theatre, you try to operate a theatre on a first run basis, what do you need as far as double bill is concerned, what kind of pictures do you need at the top half and what kind at the bottom half? [2174]

A. You need an A, double A or triple A picture as a top picture, and you need a B minus, C

(Testimony of Sidney Lehman.)

or C minus as your second feature or filler, or whatever you might want to call it. [2175]

Q. Who makes the supply of the top half features in the motion picture business—who did in 1950 and '51, what companies?

A. Well, all the major companies.

Q. Do you want to name them?

A. If you wish me to. There was Metro, Fox, Paramount, Warner's, RKO—quite a number—quite a number from Universal, a fair amount from Columbia, and a fair amount from United Artists.

Q. All right. Now, those companies are known as the majors, is that right? A. Yes, sir.

Q. Now, did these companies, any one of these companies during the period from the date you took over operating the Paradise or buying and booking for the Paradise through September 1951, ever solicit you to license any of their pictures on first run? A. No.

Q. But you had had discussions with them in which you had asked them for first run when you took over from Mr. Schreiber in 1950?

A. Yes, sir.

Mr. Johnston: I object to that as leading and argumentative.

The Court: Well, I think you are trying to argue the case. [2176]

Mr. Corinblit: I am trying to rebut the inferences suggested by some of the questions Mr. Johnston asked.

The Court: Well, I think it is leading.

Mr. Corinblit: I will withdraw the question.



(Testimony of Sidney Lehman.)

The Court: The objection is sustained.

Q. (By Mr. Corinblit): Now, if you don't have a supply of top features when you want to operate a theatre on a first-run policy, would the pictures that Mr. Johnston named off, coming from the non-majors—that is Monogram and from the other companies, the nonmajors, could they be used as the bottom half of a double bill and operate a theatre properly?

Mr. Johnston: Object to that as leading and suggesting the answer.

Mr. Corinblit: Your Honor——

The Court: Overruled.

Q. (By Mr. Corinblit): Go ahead.

A. No, you couldn't use them.

Mr. Corinblit: No further questions.

Mr. Mitchell: Nothing further.

The Court: You may step down.

(Witness excused.)

Mr. Corinblit: The plaintiff will recall for just a few questions Mr. John Bertero as a hostile and adverse witness. [2177]

### JOHN B. BERTERO

recalled as a witness on behalf of the plaintiff, under the provisions of Rule 43(b) of the Federal Rules of Civil Procedure, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

Q. (By Mr. Corinblit): Mr. Bertero, calling your attention to the product of Universal, which

(Testimony of John B. Bertero.)

has been testified here was played in a group of Fox theatres day and date with the United Artists Theatre downtown for some five years beginning in 1946, did you have a conversation with Mr. Skouras in which Mr. Skouras referred to conversations that had been had between Mr. Blumberg, the president of Universal, and the people connected with the RKO Theatres about the arrangement leading to the Universal pictures going to Fox?

A. I remember a rather hazy—I remember rather hazily a conversation of many years ago. It was very short. Mr. Skouras told me he had had a conversation with Mr. Nate Blumberg of Universal Pictures.

Q. And what did Mr. Skouras tell you that Mr. Blumberg had told him?

A. Well, I am going back quite a distance. That must have been about 1945 or 1946. Perhaps earlier than that. [2178] I think the war was on or we were just at the end of the war and it is my recollection that Mr. Skouras had just returned from a meeting with Mr. Blumberg and he said that, as I recall, that the RKO-Pantages Theatre was backlogged with a lot of pictures.

Normally they were playing the RKO pictures concurrently with the Universal product.

Q. And Columbia product?

A. That I don't recall, but in any event the pictures were lasting so long—times were different then and a picture that would last, say, a week or two weeks today was lasting five, six, or eight weeks

(Testimony of John B. Bertero.)

then, and it is my recollection that the Universal pictures were being delayed on release and that Mr. Blumberg had told Mr. Skouras that he was looking for other first-run arrangements in Los Angeles.

It is just a rather hazy recollection of a conversation years ago.

Q. Did Mr. Skouras tell you that Mr. Blumberg had told him that he, Mr. Blumberg, had had a conversation with Mr. Rodney Pantages—let me stop there.

Who was Mr. Rodney Pantages in 1946?

A. He was the operator of the RKO-Pantages Theatre on Hollywood Boulevard.

Q. And those two theatres were operated jointly, the Pantages Theatre Downtown and the Pantages [2179] Theatre on Hollywood Boulevard? I mean the RKO Hill Street Theatre downtown and the Pantages Theatre on Hollywood Boulevard were operated jointly at that time, is that correct?

A. I don't know their arrangement, but normally they played the pictures day and date.

Q. Now, what did Mr. Skouras tell you that Mr. Blumberg related to him concerning his conversation with Mr. Pantages?

Mr. Mitchell: I object to that on the ground it assumes a fact not in evidence, that there ever was a conversation with Pantages or that there ever was a conversation between Skouras and Mr. Blumberg about Pantages.

Mr. Johnston: I think there is a more basic ob-

(Testimony of John B. Bertero.)

jection than that. This calls for several degrees of hearsay.

The Court: I was just wondering about the hearsay rule. Ordinarily you can't introduce hearsay testimony, but you can ask the witness about conversations that are purely hearsay.

Mr. Corinblit: Yes.

The Court: At least that is what you are doing, but I don't know if you are doing it properly.

Mr. Corinblit: This is a conversation—let me say this: This is a conversation between the president of one of the defendant corporations, Mr. Charles Skouras, and Mr. John Bertero. This is a conversation in which Mr. Skouras stated to Mr. Bertero what he was told by the president of [2180] another defendant company in this case, Mr. Blumberg. Mr. Blumberg was president of Universal. Now there is——

Mr. Johnston: What he was told—you haven't completed the story, what he was told by somebody else who isn't a party to this proceeding at all. That is the vice of the question. [2181]

Mr. Corinblit: No, your Honor. We can get the matter straightened out. The question here is Mr. Bertero had a conversation with Mr. Skouras about this matter of first run Universal pictures. Mr. Skouras told Mr. Bertero what Mr. Blumberg, the president of Universal had told him about the arrangement leading to the Universal transferring the Universal product to Fox.

There is no hearsay problem here because you

(Testimony of John B. Bertero.)

have got the officers of Fox—here is an officer of Fox on the stand who is testifying about it and testifying about a conversation with the president of his own company.

You have the man here——

The Court: Well, I suppose he can testify as to what the conversation was.

Mr. Corinblit: Yes.

The Court: But suppose the man who is conversing then says, “So and so told me that he got it from so and so.” That is purely hearsay.

Mr. Corinblit: But that hearsay rule does not apply in a situation like this, where you have the representative of the defendant on the stand.

Mr. Johnston: I don’t care whether he is the president or the janitor, Mr. Corinblit. It doesn’t make any difference. He can’t—excuse me, your Honor. I should be addressing the court. [2182]

In my opinion, your Honor, Mr. Bertero nor anyone else can say that Mr. so and so told him that and that Mr. so and so told him that and Mr. so and so said this.

Now, if we get into that, we might as well throw the hearsay rule out the window. It is pure hearsay of the rankest sort.

Mr. Corinblit: Your Honor, especially in the light of the testimony in this case and the records that have gone into it, the arrangement that Mr. Bertero testified to was that Mr. Skouras was telling—suppose Mr. Skouras was here on the stand and you were asking Mr. Skouras:

(Testimony of John B. Bertero.)

“How was it that Fox got Universal product,” and he said, “I got it from Mr. Blumberg. Mr. Blumberg prior to that had discussed the matter with so and so and had agreed to transfer the product to Fox.” It is as simple as that.

The Court: When Mr. Bertero was on the stand the other day, did you go into this question?

Mr. Corinblit: No. That was one of the questions Mr. Bertero stated—Mr. Bertero stated he had to leave and he couldn't go over until the next day and it was agreed he was to come back for two or three questions. This is one of them. It is very brief and there are only one or two others.

The Court: I suppose you have a right to ask the witness what the conversation was.

If you can remember the conversation, you may state it. [2183] If you can't remember, then, of course, you can't testify as to it.

The Witness: It was a high-light of some years ago. It wasn't a conference between Mr. Skouras and myself. He just came into the office and he asked me to come in with him to take some other matter, and just as a passing remark he told me about the Universal situation.

As I remember it, pictures were lasting so long over at the RKO-Pantages Theatre that Universal was apparently dissatisfied and wanted to get its pictures played off faster, which meant they went on the market, which is always a delight to an exhibitor.

(Testimony of John B. Bertero.)

The Court: Is that all you can remember of the conversation?

The Witness: I only remember the high-lights. It was a passing remark of Mr. Skouras. That was all.

Q. (By Mr. Corinblit): Now, Mr. Bertero, isn't it a fact that Mr. Skouras told you that in a conversation with Mr. Blumberg, the president of the Universal Film Company, Mr. Blumberg had talked to a representative of the RKO—let me get the exact language,—talked to RKO about transferring the product to Fox and the RKO representative was agreeable to transferring the products to Fox. Isn't that what Mr. Skouras told you?

Mr. Johnston: I am going to object again on the [2184] ground that this calls for hearsay upon hearsay.

The Court: Overruled.

The Witness: I can't remember that at all. I have no recollection that that ever occurred.

Mr. Corinblit: I will show you—

The Witness: Will you repeat your question?

Mr. Corinblit: Will you read the question, Mr. Reporter.

(Question read.)

The Witness: You are talking about Rodney Pantages?

Q. (By Mr. Corinblit): Yes.

A. When you say RKO?

Q. Yes.

A. He wasn't RKO. He was the owner and oper-

(Testimony of John B. Bertero.)

ator of the Pantages Theatre. In fact, he and his father built it, and then some time in the middle 30's he made arrangements with RKO either to sell them a half interest or something. Anyway they jointly operated it and obviously he was the theatre operator and he apparently had a sufficiency of product and it was agreeable with him, with Mr. Blumberg, apparently, too, for Universal to sell those pictures away.

Normally, a customer would holler if they lost their pictures but Rodney Pantages obviously was satisfied if he couldn't play them. But I don't remember the conversation, Mr. Corinblit. I don't pretend to. [2185]

Q. Well, Mr. Bertero, you testified to the fact, so I don't need the conversation.

A. You said RKO representative, and Rodney Pantages would have been the only one.

Q. And Mr. Rodney Pantages, as you testified, some time in the thirties entered into an arrangement with Fox—

A. As I said, I didn't know those arrangements, but it became publicly known he and RKO had formed some sort of an arrangement.

Mr. Johnston: He didn't enter into an arrangement with Fox.

Mr. Corinblit: Correct. With RKO. All right.

Q. Now, Mr. Bertero, calling your attention to the termination of the interest of United Artists Theatre Circuit in United Artists West Coast Theatres Corporation, I want to establish, if I can, the



(Testimony of John B. Bertero.)

dates of certain meetings between Fox, between Mr. Joseph Schenck of UA Theatre Circuit, as well as Twentieth Century-Fox, and Mr. Skouras and yourself. I would ask you to state whether or not there was a meeting between Mr. Skouras and Mr. Schenck—

Mr. Mitchell: Which Mr. Skouras?

Q. (By Mr. Corinblit): Mr. Charles Skouras and Mr. Joseph Schenck on or about the week of April 27, 1949.

A. There was a meeting, I think that's the second meeting we had in Florida. [2186]

Q. That was in Florida?

A. Yes. That was the United Artists team, and Mr. Skouras, Charles Skouras, Mr. Coxe and myself attended on behalf of Fox West Coast Theatres Corporation.

Q. You say that was a second meeting in Florida at that time?

A. I think that was in April 1949.

Q. Pinning it down, would you say there were meetings in the week of April 27, 1949?

A. Mr. Schenck customarily went for a winter vacation in Florida, and this was a very important subject for discussion between the two companies, because of the values of the properties involved, and he and his attorneys, and I believe their treasurer of United Artists Theatre Circuit, were in Florida, and he asked Mr. Skouras if he would come to Florida to discuss this subject. So Mr. Skouras, myself, and Mr. Coxe, our treasurer, went

(Testimony of John B. Bertero.)

to Florida, and I think we were there probably—I don't remember, a week or three or four days.

Q. You were there during the week of the 29th?

A. Well, I would have to somehow or other verify that. I don't know. It was in April, I remember.

Mr. Corinblit: Let me mark this first. We will mark as plaintiff's exhibit next in order letter agreement between Fox West Coast Theatres Corporation, [2187] signed by Charles P. Skouras, and United Artists Theatres of California, Ltd., by Joseph M. Schenck, president, dated April 27, 1949.

The Clerk: 66 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 66 for identification.)

Mr. Mitchell: Is this going to be offered?

Mr. Corinblit: First to refresh recollection, and then there will be portions of it offered.

Mr. Mitchell: In compliance with the court's order?

Mr. Corinblit: Yes.

Q. I will show you Plaintiff's Exhibit 66 for identification, Mr. Bertero, and ask you to examine it. Are you familiar with that document, by the way?

A. Not any more.

Q. All right. Is this the signature of Mr. Charles P. Skouras and the signature of Mr. Joseph Schenck?

A. It is.

Q. All right. I ask you, Mr. Bertero, does this refresh your recollection that the time of the meetings, one of the meetings in Florida between Mr.

(Testimony of John B. Bertero.)

Schenck and Mr. Skouras and yourself was in the week of April 27, 1949?

A. Well, we were in Florida. This document was signed while I was there. In fact, I attended to its execution. It is dated April 27th and I have every reason to believe it is dated on the date we were there. I think we were there three or [2188] four days or a week. I don't remember how long we were there.

Mr. Corinblit: Your Honor, we will offer in evidence Exhibit 66, and I think your Honor should examine it to determine what portions of the exhibit you desire to admit.

Mr. Johnston: Your Honor, this is similar in nature to some other exhibits that have been introduced with qualifications. I suggest the same qualifications should be applied here. Perhaps Mr. Corinblit could indicate the portion to be offered subject to the prior ruling. Would you do that, Mr. Corinblit?

Mr. Corinblit: All right. As soon as the court is through.

The Court: I am going to sustain the objection to the document in toto.

Q. (By Mr. Corinblit): As a result of the agreement reached between your company and United Artists Theatre Circuit at this meeting in 1949, certain theatres went to United Artists Theatre Circuit and certain theatres went to Fox, is that correct, Mr. Bertero?

A. I testified before that this was the reorgani-

(Testimony of John B. Bertero.)

zation of United West Coast, an important company, and the problem involved was who got what theatres. One of our objectives was to acquire the Chinese Theatre, and I think it is as an outgrowth of those discussions that they agreed to sell us the [2189] Chinese Theatre and we agreed to trade them three other theatres for the Chinese. I have forgotten the particular details. But that is the first memorandum of the understanding.

Q. All right.

A. It was ultimately embodied in voluminous legal agreements.

Mr. Corinblit: We will next mark for identification—I want to just mark this for identification now.

The Court: It may be marked for identification only.

Mr. Corinblit: An agreement between Fox West Coast Theatres Corporation, United Theatres Corporation of California, Ltd., United West Coast Theatres Corporation, and Fox West Coast Agency.

The Clerk: 67 for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 67 for identification.)

Q. (By Mr. Corinblit): I will show you Plaintiff's Exhibit 67 for identification and just ask you, Mr. Bertero, whether this was the final agreement between the companies indicated relating to the termination of interests that you have described?

A. Affecting what theatres? There was more than one agreement.

(Testimony of John B. Bertero.)

Q. I see. Is this one of the agreements which [2190] related to that subject?

A. Yes. We signed up that arrangement——

Mr. Mitchell: Can't hear you, Mr. Bertero.

The Witness: We signed up the final documents, as I recall, most of them in December 1949. There were one or two other documents signed a little earlier, but there was a great mass of documentary work involved in concluding our arrangements. This is an unconformed agreement, and I don't know if this is the final, but if our counsel has supplied it to you, then this is one of the agreements. I am sure he has. It is our agreement.

Mr. Corinblit: Yes. I received this from him or I have a copy which is a duplicate of this. Is that right, Mr. Johnston?

Mr. Johnston: I am sure you did, yes.

Mr. Corinblit: I have no further questions at this time.

Mr. Johnston: We have no questions, your Honor.

The Court: You may step down.

The Witness: Thank you.

(Witness excused.)

Mr. Corinblit: The plaintiff will call Mr. Max Schreiber. [2191]

MAX S. SCHREIBER

called as a witness by and on behalf of the plaintiff herein, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Max S. Schreiber.

Direct Examination

Q. (By Mr. Corinblit): Mr. Schreiber, are you the son of Mr. Alex Schreiber? A. Yes.

Q. Have you been an officer of the plaintiff corporation, Paradise Theatre Building Corporation?

A. I have.

Q. What office have you held in that company?

A. Vice president.

Q. Calling your attention to the year 1949, did you have a conversation with Mr. Edward F. Zabel of Fox West Coast and others pertaining to the Paradise Theatre? A. I did. [2192]

Q. And where did the conversation take place?

A. At the Beverly-Wilshire Hotel.

Q. Beverly-Wilshire Hotel? A. Yes.

Q. And can you tell us when that conversation took place?

A. Prior to the opening of the theatre.

Q. Did the conversation take place in 1949 or 1950? A. It was in 1950, June or July.

Q. All right. Was there someone who asked you to come to a meeting at the Beverly-Wilshire Hotel?

A. I was asked to come by Mr. William Toplikar.

Q. And will you state who were present at the meeting at the Beverly-Wilshire Hotel?

(Testimony of Max S. Schreiber.)

A. Mr. Phil Isley, Mr. Earl Collins. He was from Republic Pictures, and Mr. Eddie Granger, who was a producer of pictures. I believe he was at RKO.

There was Mr. Zabel, Mr. Toplikar who was a real estate broker, and perhaps a Mr. James Haynes who was associated with Mr. Isley in the Picwood Theatre.

Q. Was Mr. Isley there at the meeting?

A. Mr. Isley was there at the meeting.

Q. Now, will you state what you said at the meeting and what the other persons present at the meeting said?

A. Mr. Collins and Mr. Granger and Mr. [2193] Toplikar had been to the theatre to see my dad and myself on several occasions prior to that meeting in regard to purchasing the Paradise Theatre.

We had had some preliminary negotiations with them and Mr. Toplikar called me to come to the Beverly-Wilshire Hotel that night. It was about 9:30 or 10:00 o'clock that night. I guess he called me at dinner to meet them there at 9:30 or 10:00 o'clock at night. He told me that they had a firm proposition to make.

I went to the meeting, of course, and we talked in general about the theatre business and the Picwood Theatre which they had, and I was introduced to the gentleman there that I didn't know, which was at that time Mr. Isley. I hadn't met him before.

Mr. Zabel was introduced—I was introduced to

(Testimony of Max S. Schreiber.)

Mr. Zabel and we talked about the Picwood Theatre which Mr. Isley owned. And we talked about the La Tijera Theatre which was open and which Mr. Isley had.

We talked about the Imperial Theatre and we talked about Mr. Isley's theatres in Texas.

Mr. Zabel talked some about the Fox theatres and the picture situation.

Then they made an offer and Mr. Isley told me that they were willing to pay \$550,000 for the theatre as it was. It was completed. The theatre was completed but it was not open. [2194] We didn't have any pictures. It wasn't open. We were closed but the theatre was all completed ready to open. It could have opened the next day and he said:

"We don't need any lawyers or anything." He says, "I will just write it out here on the stationery, if you want. That is the way we do things in Texas."

And I said, "Well, I don't know. What does the \$550,000 consist of? How do you want to pay it? Is that \$550,000 cash or do you want to pay off the mortgage, too? We have the equipment. Do you want to take over the contracts for the equipment?"

He said, "Well, let us figure it out and see what it is." There was \$175,000 mortgage which they were going to assume, and there was \$60,000 or \$70,000 in equipment payments they were going to assume, and they were going to give us \$150,000 cash and the balance of the money over a three or four-year period.

I said to them, "Well, I still have about \$125,000



(Testimony of Max S. Schreiber.)

or \$150,000 coming and how would we know that we would get our money if we turned it over to you because we can't get any pictures to open the theatre. If we had pictures we would open the theatre ourselves," and Mr. Zabel said, "We will not have any trouble getting pictures. We will take the theatre and get pictures. That is why we are taking the theatre. We will put the pictures in the theatre. You have [2195] nothing to worry about and you will get your money."

So Mr. Collins said, "We don't have any trouble getting pictures at the Picwood," and I said we had had trouble. He said he had a little trouble to begin with, but "We have pictures now and will get pictures for the Paradise Theatre, but you can't get any pictures. We will get all the pictures."

So, that went on until about 1:30 in the morning, and I told them I would talk it over again with my dad the next day when I saw him and we would let them know.

That was a week day night, a Wednesday or Thursday, and that was the only meeting I had with the gentlemen.

I told my dad about it the next day and we discussed it for two or three days, and I believe they came over.

Q. All right. A. Is that enough?

Q. Yes. Mr. Schreiber, you have related the conversation as best you recall that took place at the Beverly-Wilshire, is that correct? A. Yes.

(Testimony of Max S. Schreiber.)

Q. And that was the only conversation you were present at with Mr. Zabel, is that correct?

A. Yes.

Q. Now, prior to this meeting with Mr. Zabel and the other persons that you mentioned at the Beverly-Wilshire Hotel, in about 1949, were you present at a meeting at which your [2196] father was present and Mr. Joseph Schenck and Mr. Irving Epstein and Mr. Pat Di Cicco were present in the office of Mr. Schenck at the Twentieth Century-Fox Studios? A. I was.

Q. Now, do you remember the approximate date of that conversation?

A. I believe it was March 15th or 16th, 1949.

Q. Now, will you tell us what was said—tell us your recollection of what was said at that meeting by you and the other parties present?

A. Well, I went there with my dad to the meeting and we went with Mr. Irving Epstein or he met us there at the office, at the receptionist's desk and we went into Mr. Schenck's office and Mr. Di Cicco was there.

I didn't say anything at the meeting that I can recall of any particular interest or importance.

I was introduced to Mr. Schenck and Mr. Di Cicco, and Mr. Epstein I had met. And the discussion was in regards to Mr. Schenck purchasing an interest in the Paradise Theatre with us. [2197]

It was to be a 60 per cent interest for Mr. Schenck's group, and we were there—sometime during the morning I recall Mr. Schenck showing us the

(Testimony of Max S. Schreiber.)

figures of the Loyola Theatre with the first run Fox pictures. He told my father that he had had a first run Metro in there day and date with the Egyptian and Loew's State downtown, and that it would be a very successful theatre. And based on the business that the Loyola was doing first run that with Metro pictures they certainly could do as well as the Fox pictures right down the street on the first-run basis, and it would be better for us if we had 40 per cent interest with his group than 100 per cent interest by ourselves, because we wouldn't have any pictures; and that we should be with them and then we wouldn't have to worry about anything.

My dad was going to Honolulu the next day or the day after that and Mr. Schenck told my dad to go on to Honolulu and that they would sign the papers as soon as my dad came back and that he didn't have to worry about anything; that the United Artist was going to take over the booking and buying for the theatre, and they were going to charge five per cent or five and a quarter per cent and all our worries about pictures would be over because they had all the pictures—they could do whatever they wanted.

Q. Was anything said about the plans of the theatre?

A. Yes. We had a full set of plans of the theatre [2198] and we had I believe our mortgage commitment which we showed them—how much the mortgage was that we were going to get and we were ready to start building the theatre.

(Testimony of Max S. Schreiber.)

Q. Now, that was in March of 1949, correct?

A. Yes.

Q. Calling your attention now to the year 1950, approximately March or April 1950, were you present at a group of conversations between your father and representatives of the distributors?

A. I was.

Q. Just referring to the company Universal, Mr. Schreiber, did you have a conversation with anyone at Universal?

A. With Mr. Marriott and my father.

Q. Do you remember approximately when that took place?

A. I believe in April of 1950 or March, the latter part of March or the first week in April.

Q. And was anyone else present besides yourself and Mr. Marriott and your father?

A. Just the three of us, to my recollection.

Q. And what was said at that meeting by yourself or your father or Mr. Marriott?

A. My dad asked Mr. Marriott to serve us—we wanted to open our theatre. We were almost completed. We would be in another few weeks. He wanted them to serve us first-run [2199] pictures along with the five theatres they had around the town. We wanted to be added to that group and play first run Universal pictures day and date with the other five theatres.

Mr. Marriott said he couldn't make that decision; that Mr. Rose had to make the decision, Barney Rose or Mr. Blake, who was going to take over, or

(Testimony of Max S. Schreiber.)

was going to be the new manager; that the decision wasn't up to him, but he would take it up with Mr. Rose and he would take up the seven-day availability also.

And he told us we had a—he had been by the theatre during construction and it looked like it was going to be a very fine theatre. It was in a very fine neighborhood and he said that we should have a successful theatre there. [2200]

\* \* \* \* \*

Mr. Corinblit: With respect to Mr. Max Schreiber, your Honor, we have no further questions.

### MAX S. SCHREIBER

heretofore sworn, resumed the stand and testified further as follows:

Mr. Mitchell: No questions.

Mr. Johnston: I have a few questions.

### Cross Examination

Q. (By Mr. Johnston): Mr. Schreiber, yesterday you mentioned a conversation you had at the Beverly-Wilshire Hotel. A. Yes, sir.

Q. It is true, is it not, that some time after that meeting that you have testified about, you and your father or your corporation decided not to accept the proposal that was made and to go ahead with Marco Wolff? A. That is right.

Q. At this meeting that you have described at the Beverly-Wilshire Hotel or at any time, did you learn that Mr. Zabel was acting for his daughter?

(Testimony of Max S. Schreiber.)

A. No.

Q. That never came to your attention?

A. No.

Q. Now, you also described a meeting that you had had with Mr. Schenck and others at which your father was present in 1949. [2205]

Now, with respect to that incident, Mr. Schreiber, didn't you know that if a deal could be consummated, that United Artists Theatres Circuit was to be the purchaser or part purchaser of the theatre or theatre site?

A. I knew that United Artists Theatres was to be a part purchaser and I knew they were going to do the booking and buying. That was told to me by Mr. Schenck.

Q. You knew that United Artists Theatres Circuit was to be the purchaser if the deal could be arranged, isn't that right?

A. I was always told that Mr. Schenck's group was going to purchase the theatre.

Q. Wasn't it your understanding that United Artists Theatres Circuit was going to be the purchaser?

A. My definite understanding, Mr. Johnston, was that United Artists Theatres Circuit was going to do the booking and buying and be an owner in the theatre and we, too, were going to be owners in the theatre. They were making a group.

Q. Didn't you understand, Mr. Schreiber, that Mr. Schenck was acting in behalf of United Artists Theatres Circuit?

(Testimony of Max S. Schreiber.)

A. I can't honestly say that I knew he was acting with the United Artists Theatres. He talked about the United Artists Theatres. It was going to do the booking and buying [2206] of the theatre and we were going to be partners with them.

Q. That is right. And he was going to—your understanding was that he was going to make the theatre a part of the United Artists Theatres Circuit, isn't that right?

A. They were going to operate the theatre, yes.

Q. And make it a part of United Artists Theatre Circuit, isn't that right?

Mr. Corinblit: I object to that, your Honor, calling for a conclusion of the witness.

The Court: Overruled.

Q. (By Mr. Johnston): The answer is what?

A. May I have the question again?

(Question read.)

A. Evidently that is what was going to happen. He was going to make it a part of it.

Q. That is what your understanding was, isn't that right?      A. Yes.

Q. What is the answer?      A. Yes.

Mr. Johnston: Thank you. I have no further questions.

#### Redirect Examination

Q. (By Mr. Corinblit): Just one question, Mr. Schreiber. I think you testified Mr. Irving Epstein was present at that meeting?      A. Yes.

Q. Mr. Irving Epstein is now an employee of Fox West Coast? [2208]      A. Yes.

(Testimony of Max S. Schreiber.)

Q. He was at that time? A. Yes.

Q. He is alive? A. Yes.

Q. And he works for Fox West Coast now?

A. He does.

Mr. Corinblit: Thank you. No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Corinblit: The plaintiff will recall for the purpose of damage testimony Mr. Alex Schreiber.

#### ALEX SCHREIBER

recalled as a witness by and on behalf of the plaintiff, having been heretofore duly sworn, was examined and testified further as follows:

#### Direct Examination

Q. (By Mr. Corinblit): Mr. Schreiber, the record shows the availabilities upon which your theatre operated during the period from August 23, 1950, to September 18, 1951, and the record also shows the gross receipts that were taken in.

Plaintiff's Exhibit 45-P-2 shows that the total admissions [2209] at the Paradise Theatre from August 1, 1950, to July 31, 1951, which is a period, incidentally, which will have to be somewhat adjusted, was \$76,064.32. Plaintiff's Exhibit 45-P-3 in evidence, upon the basis of the statement here, which will be somewhat adjusted by accounting testimony, shows a net loss in the Paradise Theatre of



(Testimony of Alex Schreiber.)

\$35,992.76 after depreciation for the period August 1, 1950 to July 31, 1951.

There is another amount we figured that is also in evidence which we will not go into at this time. These figures were the result of the operation on the availabilities that have been testified to.

Would you state, Mr. Schreiber, if the Paradise Theatre—first, do you have an opinion as to what the Paradise Theatre would have grossed, what the weekly gross receipts would have been if the Paradise Theatre had been able to operate during this same period upon a first run basis, that is, playing first run Los Angeles pictures, and the number of pictures being the number that you have testified to, an average of 35 to 40 top half and 35 to 40 bottom half? Do you have such an opinion?

A. I do.

Q. All right. Would you state what your opinion is?

Mr. Mitchell: Wait a minute. I object to the question upon the ground it is incompetent, irrelevant and immaterial, no proper foundation laid, pure speculation. [2210]

The Court: Well, Mr. Mitchell, we have a rule in law that the owner can testify as to value. He doesn't have to have any foundation. The owner can testify what the value is, what he thinks it is worth. It is not binding upon the jury.

Does a different rule apply in this case?

Mr. Mitchell: I would say so, yes. He is not testifying as to value, your Honor. It is an imaginary

(Testimony of Alex Schreiber.)

set of earnings. He can say anything, your Honor.

The Court: That's right.

Mr. Mitchell: And therefore it is speculative.

The Court: If I was on the witness stand and somebody asked me, "Have you got a car? How much is it worth?" I can say it is worth a thousand dollars, and it may not be worth \$50, but I can say a thousand dollars. That is legitimate, is it not?

The owner has a right to put a value upon his own property.

Mr. Mitchell: There are a great many courts that say it is not legitimate, would say it is pure speculation and has no foundation. That is the reason I am making the objection.

If you allow such testimony to be a basis of any kind of finding, it is really and realistically baseless, your Honor. I think anybody would recognize that. [2211]

The Court: Well, assuming for the purpose of argument, and this is argument only now, assuming for the purpose of argument that the plaintiff has established a liability. Now, how is he going to prove damage? What is his basis for proving damage? He is entitled to something. He has got to give some basis to the jury to determine.

Mr. Mitchell: Well, he will have to have some facts, rather than this kind of speculation. That is all I have to say, your Honor.

The Court: Well, I suppose they are going to show comparative theatres—are you not?

Mr. Corinblit: Yes, sir.

(Testimony of Alex Schreiber.)

Mr. Mitchell: Then comparative theatres on certain bases and with certain kinds of adjustments, and so on, get into a factual area, but this is into an imaginary area, where the plaintiff unrestrained can just give any old figure.

The Court: I am going to overrule the objection, but ladies and gentlemen of the jury, I think I should inform you that this is just an estimate on the part of the plaintiff and you don't have to accept his estimate at all. You are the one to determine from all the evidence what the damage is, if you find there is any damage at all. It is perfectly possible in a case like this that you may find there has been a violation, but the plaintiff hasn't been damaged at all, he is not entitled to anything. It is up to you to determine [2212] the amount, if you get that far along in this case.

Mr. Mitchell: Your Honor, will you also—excuse me.

The Court: Just a minute. You don't have to rely upon the testimony of this witness, but you are to consider the testimony of all the witnesses on this matter.

Yes, Mr. Mitchell.

Mr. Mitchell: Would you also instruct the jury they do not even have to consider this testimony if they find no liability. This is not on the question of liability.

The Court: That's right. You first have to determine there is a liability before you get to the question of damage. You mustn't discuss and you

(Testimony of Alex Schreiber.)

shouldn't discuss damage until you first determine that there is liability. So if you don't determine there is liability, then you don't have to consider this evidence at all. [2213]

Mr. Corinblit: Now, your Honor, I would like to ask your Honor to instruct the jury that any statement made by Mr. Mitchell on this particular point is not evidence.

The Court: I will instruct the jury that all statements of counsel are not evidence, either counsel for plaintiff or for the defendant.

Mr. Corinblit: Thank you, sir.

Q. Now, Mr. Schreiber, we should state once more how long you have been in the theatre business. A. A little over 37 years.

Q. And I think at the opening part of this case you described the extent of your experience with reference to theatre operations, is that right?

A. That is right.

Q. Now, will you state, please, for the jury, what in your opinion the Paradise Theatre on a first run basis, day and date with Los Angeles, would have been the weekly gross at the Paradise Theatre, operating on a basis of 35 to 40 top half, 30 to 40 bottom half first run pictures?

Mr. Johnston: It is understood our objection goes to this entire line.

The Court: Same objection and same ruling.

Mr. Mitchell: As to all this line of testimony.

The Court: You may have a continuing objection. The same objection and the same ruling.

(Testimony of Alex Schreiber.)

Mr. Corinblit: Thank you, sir.

Q. Would you state the figure, please?

A. The weekly grosses usually are based on the type——

The Court: That is not the question, Mr. Schreiber.

Q. (By Mr. Corinblit): Just the figure.

The Court: This is a technical matter and you shouldn't do anything except what the court allows you to do.

Now, the court is allowing you to answer these questions but not to make a speech.

The Witness: I was going to explain——

The Court: Do not explain. Just answer the question.

The Witness: An average of \$4500 a week.

Q. (By Mr. Corinblit): That would have been in your opinion the average weekly gross at the Paradise Theatre, is that correct?

A. That is right. May I explain?

The Court: First run Los Angeles?

Mr. Corinblit: First run.

The Witness: Can I explain how I arrived at that?

The Court: Not unless your counsel asks for it.

The Witness: Okay.

Mr. Corinblit: Now, at this time we will offer in evidence Plaintiff's Exhibit 45-Q-1, which is the profit and loss statement of the Loyola Theatre for the period involved.

The Court: In evidence. [2215]

(Testimony of Alex Schreiber.)

Mr. Mitchell: Your Honor, just a minute.

The Court: I was waiting for an objection. If I don't get an objection, I suppose that there is no objection.

Mr. Mitchell: May your ruling go out for the purpose of making an objection?

The Court: Yes.

Mr. Mitchell: I object to it on the ground that it is incompetent, irrelevant and immaterial. There is no proper foundation laid for it.

I admit it is the statement of the Loyola Theatre, but no proper foundation has been laid to show the propriety of the comparison.

I am really making this objection for the record, your Honor, because at a later time, at an appropriate time when we argue the whole problem here, which I think you will agree we may argue at some appropriate time, I want to be in position to move to strike this out. I am making the objection for the record.

The Court: This is a profit and loss statement for the Loyola Theatre?

Mr. Corinblit: Yes.

The Court: You say this is not a correct profit and loss statement?

Mr. Mitchell: No, I do not say so. I admit it is a profit and loss statement of the Loyola Theatre.

The Court: One of the ways to prove damages in a case like this is by comparing the plaintiff's theatre with other theatres. That is the established rule.

Mr. Mitchell: There have to be certain equalities

(Testimony of Alex Schreiber.)

of comparison, your Honor. And as I say, I am making this objection so I may at an appropriate time move to strike it out when we argue the whole problem. I don't want to argue it piecemeal.

The Court: The objection is overruled. It is admitted in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 45-Q-1, was received in evidence.)

Mr. Corinblit: I don't know if counsel wants me to do the subtraction here, but the combination of the records you have here show the Loyola's gross receipts were approximately—

Mr. Mitchell: This is just an argument, your Honor.

The Court: Can you stipulate as to what the gross receipts are in the profit and loss statement so he can put them on the board?

Mr. Corinblit: There is no need for a stipulation. What I will do for Mr. Mitchell, if he wants me to, is put on the total gross receipts and divide it by 52 in order to get at a weekly figure. I have done that and I would like Mr. Mitchell to agree with me that the figure is approximately [2217] \$4500 a week.

Mr. Mitchell: I haven't seen the figures at all.

The Court: What period of time is that for?

Mr. Corinblit: We have, your Honor, here two figures. The period—the ultimate period is the same. It will ultimately be from September 1—just a moment, please.

Mr. Mitchell: The only material period in this action is September 17, 1950 to September 17, 1951.

(Testimony of Alex Schreiber.)

That is the period in which we are charged with having conspired against this man and the period in which we are charged with having damaged him.

The Court: That is right, and no other figures other than for that period are material.

Mr. Corinblit: That is correct. I am not putting in anything else. We have figures here, the total figures and perhaps—

Mr. Mitchell: What time is it? Let us see what time you are talking about.

Mr. Corinblit: Don't you have a copy of this, Mr. Mitchell?

Mr. Mitchell: No, I do not have one before me.

Mr. Corinblit: It is stipulated between counsel that the average weekly gross of the Loyola Theatre for the period October 1, 1950 to October 1, 1951, and there is an overlap, is \$4500 a week. [2218]

Mr. Mitchell: Subject to our objection.

Mr. Corinblit: Yes, subject to your objection.

The Court: May I suggest that when you come to a discussion of the question of net revenue or net profit, it will depend on the overhead of each theatre. The overhead of a motion picture theatre is more than the price of the pictures.

Now, do we have any testimony here as to the number of employees in the various theatres, the amount of the overhead or anything like that?

Mr. Corinblit: Your Honor, in evidence here is the cost, total cost of operation of the Paradise Theatre, the cost of the operation of the Loyola



(Testimony of Alex Schreiber.)

Theatre and we will put in the cost of the operation of the Academy Theatre.

The Court: You have that?

Mr. Corinblit: Yes, and there will be testimony to make the necessary adjustments. This is on a first run basis. [2219]

Q. Now, Mr. Schreiber, on a first run basis, where the gross receipts were \$4,500 a week, do you have an opinion as to what would have been and what would be a reasonable film rental to be paid for first run pictures based upon this same first run situation? A. I have.

Mr. Mitchell: Same objection.

The Court: Same ruling.

Mr. Mitchell: To all this line of questions, your Honor.

The Court: You may have a continuing objection; same ruling, continuing the same ruling.

Q. (By Mr. Corinblit): And what in your opinion would be a reasonable film rental?

A. 40 per cent of the gross receipts.

Q. Have you computed from the Loyola film rental the approximate film rental percentage paid by the Loyola? A. I did.

Q. For the same period indicated. What was that percentage?

Mr. Johnston: Your Honor, I object to that as being immaterial, inasmuch as Fox owned the Loyola Theatre and the rental paid is a matter of complete immateriality in this proceeding here.

The Court: If the jury doesn't have this infor-

(Testimony of Alex Schreiber.)

mation, [2220] how can it arrive at any estimate at all? It has to have something to base its findings on.

Mr. Johnston: Simply this. The figure that the Loyola paid for film rental is meaningless because they might have paid \$1.00 or \$10. If they owned the theatre, they could pay anything they wanted to.

The Court: That is perfectly true. They could pay anything they wanted to.

Mr. Johnston: There is no impropriety in their paying anything they wanted to.

The Court: Objection overruled.

Q. (By Mr. Corinblit): What was that percentage, Mr. Schreiber?

A. I believe the percentage was between 30 and 31 per cent.

Q. Now, the other thing that enters into the results at the Paradise Theatre, had you exhibited the pictures on a first run basis, would be expenses, is that right? A. That is correct.

Q. All right. Now, in the theatre business, a theatre business in a sense is a little unusual about this matter of expenses, isn't it, Mr. Schreiber, that is, what are the facts as to, for example, whether certain expenses remain the same, even though your gross receipts go up? Are there certain items of expense that remain the same? [2221]

A. That's right.

Q. Would you give me an example of that?

A. Well, your electric light is the same, your water is the same, your help is practically the same,

(Testimony of Alex Schreiber.)

use the same cashier, use the same doorman, use the same manager, use the same assistant manager, and use three or four usherettes. It is all the same.

Your taxes are the same, your insurance is the same, your heating is the same, your janitor supplies are the same. Your inside advertising is the same. If you have four frames, you keep four frames with advertising on it. The same four pictures are advertised week in and week out. You have the same space.

Your carbons to project the pictures on the screen cost the same whether you are showing to 1200 people in the theatre, you are showing to a hundred people in the theatre, or if you are showing to 50 people in the theatre. That cost is the same.

Q. If you go to a policy which results in a larger amount of gross receipts, however, there are some expenses which may increase, is that right?

A. Yes, that's right.

Q. All right. One of the important differences in expenses between running on a subsequent run policy, as the Paradise Theatre operated, as distinguished from a first run [2222] policy, is the matter of advertising, isn't that right?

A. That is correct.

Q. Plaintiff's Exhibit 45-P-2 shows that for the period August 1, 1950, to July 31, 1951, the advertising figure is \$12,830.35. That includes some other advertising, but we will get to that in a minute.

Having in mind the advertising the Paradise

(Testimony of Alex Schreiber.)

Theatre was doing playing on the policy it did play, playing in that position, would there have been an increase in the advertising expenses for the Paradise Theatre if it operated on a first run policy, as you described it?      A. Yes.

Q. What does that increase represent, what kind of activities do you have on first run that are not ordinarily carried out as a 7 day theatre in advertising?

A. You do more advertising in the metropolitan newspapers.

Q. That is, these large displays that we ordinarily see in the newspapers have to do with first run theatres, and the 7 day theatre ordinarily does not participate in that?      A. No, they do not.

Q. On a first run basis, you would?

A. That's right.

Q. And that involves increased expense?

A. That's right, although when we got a 7 day picture, [2223] we took some additional advertising in the paper so we could let our patrons that were in the theatre know that we were running an early picture, 7 day. We wanted them to know about it because it was such a rare occasion.

Q. This increased advertising would result in increased expense for the Paradise Theatre, and I want you to give us what the figure for advertising would be, the increased amount, not the total figure, but the increased amount for advertising.

The Court: Mr. Corinblit, before you get into that——

(Testimony of Alex Schreiber.)

Mr. Corinblit: Yes, sir.

The Court: You had 40 per cent for your film rental. Does that include second feature, too?

Mr. Corinblit: That is total, your Honor.

The Court: You mean you are not talking about 40 per cent for the first feature, but you are talking about all the film rental?

Mr. Corinblit: Yes, sir.

The Court: Then the 30 to 31 for the Loyola, is that all the film rental?

The Witness: Yes, sir.

Mr. Corinblit: Yes, sir.

The Court: All of it?

Mr. Corinblit: First and second feature.

The Court: All right. [2224]

Q. (By Mr. Corinblit): Now, will you state what, in your opinion, would be the increased expense re advertising at the Paradise if you operated on first run policy as you have described?

A. An additional \$150 a week, or a little over \$7,500 a year.

Q. Now, in addition to an increased expense with regard to advertising, if you had more people coming in at the box office, larger gross receipts, would you have had an increase in the total salaries that you would have paid at the Paradise Theatre?

A. We would have.

Q. Would that be—well, first, give me the figure it would have been, the increased salary, and then you can explain what the figure is.

(Testimony of Alex Schreiber.)

A. An average of \$100 more a week to our employees.

Q. Now, would you explain what that \$100 would represent?

A. It would represent an increase to our motion picture operators, who would immediately go from the scale that we are now paying to a first run scale like the Loyola, which would run about \$36 a week increase. When we would go to a first run policy, we would have to pay the first run scale.

In that case, where we would gross \$4,500 a week on a first run policy, our manager would be compensated an additional [2225] \$10 or \$15 a week.

In order to give the people good service, we would hire another usherette. These usherettes work after school usually and they come in at 6:30 and they work until about 9:30 at night, so there would be maybe the expense of another usherette.

The janitor, because of that increase in business, would need a helper over the week-end, Friday, Saturday and Sunday. He would require a helper to help him clean up—there would be more popcorn boxes and candy wrappers and so forth—clean up the theatre and watch everything so the theatre would be always clean and immaculate.

There may be an increase to the cashier and there may be an increase to the doorman, which would run about \$100 a week for our employees.

Q. Now, if you had had a first run policy with these gross receipts, paying this film rental and these increased expenses that you have indicated,

(Testimony of Alex Schreiber.)

would you have had an increase in miscellaneous expenses?

A. Well, it is always best to figure some miscellaneous items that come up from time to time, and it is best to figure around \$1,000 a year, or roughly \$20 a week.

Q. Mr. Schreiber, if instead of a first run policy, the only policy that had been permitted to you was a policy of playing pictures 7 days after Los Angeles first run closing, do [2226] you have an opinion as to what would have been the gross of the Paradise Theatre on that 7 day policy? Do you have an opinion? A. I do. [2227]

Mr. Corinblit: Before you give me that opinion, I would like to offer in evidence Plaintiff's Exhibit 45-Q-2 which is a profit and loss statement from the files of the defendant Fox pertaining to the Academy Theatre.

Mr. Mitchell: One minute. I object to that upon the ground it is incompetent, irrelevant and immaterial. There has been no proper foundation laid. However, I am not objecting to it on the ground—I admit that it is—what do you call it, a profit and loss statement of the Academy Theatre.

My objection goes to the other factors.

The Court: Objection overruled. It is admitted in evidence.

(The exhibit heretofore marked Plaintiff's Exhibit 45-Q-2, was received in evidence.)

Mr. Corinblit: This is the Academy and this is

(Testimony of Alex Schreiber.)

the Paradise. I have written at the top: "Seven Day Policy on Seven Days."

Now, first, let me get this stipulation, that is that on the average weekly gross on the Academy we find it is approximately \$3800.

It is agreed and stipulated that the Academy gross receipts for an average of \$3800 per week.

Q. Now, Mr. Schreiber, what would your opinion have been as to what the Paradise would have grossed on a 7 day policy? [2228]

A. The same figure, \$3800 weekly receipts.

Mr. Corinblit: There is one other figure that I would like to have agreed to, and that is the total film rental paid at the Academy for a 54-week period. First a 52-week period indicated by the same schedule and my figures show approximately \$88,000.

Mr. Westbrook: For 52 weeks \$88,000.

Mr. Corinblit: Now, you take 2/52 of that makes an addition of approximately \$3,400 so we would have a film rental for those 54 weeks of——

The Witness: That is pretty small, Mr. Corinblit.

Mr. Corinblit: We will put in a larger chart to show these figures.

It is a total figure of \$91,400 at the Academy.

Now, what would be the film rental——

Mr. Mitchell: Are you making a 54-week period out of this by that adjustment?

Mr. Corinblit: I am putting it on a 54-week period.



(Testimony of Alex Schreiber.)

Mr. Mitchell: The period involved in this action is 52 weeks.

Mr. Corinblit: Your Honor, the period involved in this action runs from August 23, 1950 to September 17, 1951.

Mr. Mitchell: That is incorrect. If you will look at the complaint, your Honor, paragraph 25—  
\* \* \* \* \*

The Court: Or the amended complaint. The amended complaint was filed on January 23, 1952.

Mr. Corinblit: Yes. We don't have any quarrel about the amended complaint relating back to the filing of the original.

The Court: That paragraph doesn't state when the damage period started.

Mr. Corinblit: That is right, but the damage "to date" of course means when the theatre opened. What other date would be indicated?

Mr. Mitchell: You can't be damaged unless by some conspiratorial act and he says the conspiratorial acts were [2231] prior, one year prior to the filing of the complaint, and that is September 17, 1950, to September 17, 1951. That is when we were conspiring and no other time.

The Court: You say "for the last year past."

Mr. Mitchell: I should say alleged to be conspiring.

The Court: And to the present time.

Mr. Corinblit: Well, your Honor, that with respect to all the allegations of liability—

The Court: That is what we are talking about.

(Testimony of Alex Schreiber.)

Mr. Corinblit: That is right, but when we come to the damage paragraph, your Honor, we talk about being damaged up to the time the complaint was filed.

Now, that is from the opening. We also alleged in the complaint that the theatre was opened on August 23, 1950.

The Court: I am going to restrict you to one year.

Mr. Corinblit: Very well, your Honor.

Let the record show the plaintiff takes an exception to the ruling of the court.

The Court: Yes, the record may show an exception to the ruling of the court. I expect we will have a lot of exceptions.

Mr. Mitchell: As I understand it, everybody has an automatic exception. Every time there is an adverse ruling, the party has an automatic exception.

The Court: You don't have to take an exception any more. [2232]

Mr. Corinblit: All right.

The Court: Don't you want to change your figures back to the original figure?

Mr. Corinblit: I am going to do that, your Honor.

The figure for the 52-week period is approximately \$88,000.

Q. Now, Mr. Schreiber, do you have an opinion as to what the Paradise Theatre would have paid for 7 day pictures operating on the 7 day policy

(Testimony of Alex Schreiber.)

described, during the same period? What would have been the film rental?

A. The film rental would have been the same as the Academy film rental.

Q. \$88,000.

Now, if the Paradise Theatre had operated on a 7 day, a 7 day after Los Angeles first run closing, what would have been, if any, the changes—the increased expenses that the Paradise Theatre would have incurred?

A. Very little increase. It would be just practically that miscellaneous item there of \$20 a week.

Q. There would be no increase for advertising, is that right?

A. No, because we had already spent over \$12,000 for advertising, so there would be no increase in that. [2233]

Q. And there would be no other increase in salaries and expenses, is that right?

A. No, because the operators, the two men in the booth that we had, the salary would remain the same, because it was not a first run policy.

Q. So the only increased expenses would have been roughly \$20 a week?

A. Yes, miscellaneous expenses.

Q. \$1,000 per year. Now, under the evidence, the schedule that has been put in, and as I say it will be somewhat adjusted, the record shows a loss for the Paradise Theatre for the period August 1, 1950, to July 31, 1951, of some \$36,000.

(Testimony of Alex Schreiber.)

The Loyola Theatre profit for the period of one year——

Mr. Mitchell: Let's see what year it is, because we are talking about September 17, 1950, to September 17, 1951.

Mr. Corinblit: All right. The same year. We will take the figures for the Loyola.

The Court: Mr. Corinblit, can you tell me from your figures there what was the cost of operating the theatre for a year, other than film rental?

Mr. Corinblit: Other than for film rental for the year, your Honor? [2234]

The Court: Yes.

Mr. Corinblit: Yes. Approximately \$78,000.

The Court: Approximately \$78,000?

Mr. Corinblit: Let me check that. Yes, sir. Approximately \$78,000.

Do you have that figure now, counsel? I want the net profit for the Loyola Theatre for the year. Approximately \$66,000?

Mr. Westbrook: That is approximately correct.

Mr. Corinblit: All right.

Mr. Westbrook: Counsel, can we have a stipulation that this doesn't cover the exact period you are talking about? It is October 1, 1950, to September 29, I believe it is, 1951.

Mr. Corinblit: September 30th. Yes, that's right. There is a slight overlap of about 17 or 15 days.

So the figure for the net profit for the Loyola for the same period, for the year period, is approximately \$66,000.

(Testimony of Alex Schreiber.)

The Court: The Loyola?

Mr. Corinblit: Yes, sir.

The Court: Is that net profit?

Mr. Corinblit: Yes, sir, after depreciation.

Now, can we get a stipulation with respect to the Academy Theatre? [2235]

Mr. Westbrook: Do you have the figure?

Mr. Corinblit: Yes. (Handing document to counsel.)

Mr. Mitchell: These stipulations we are making, your Honor, are all subject to the objection.

The Court: All subject to the objection.

Mr. Westbrook: Approximately \$44,000 for the same period we stipulated to previously.

Mr. Corinblit: Yes. Approximately \$44,000.

The Court: Mr. Corinblit, let's stop right there for a minute.

Mr. Corinblit: Yes, sir.

The Court: And let's discuss a problem or two. You are comparing the plaintiff's theatre with the Loyola, a first run theatre.

Mr. Corinblit: Yes, sir.

The Court: And the Academy, a 7 day theatre.

Mr. Corinblit: Yes, sir.

The Court: You don't contend that the plaintiff could have run its theatre better than the Loyola, so it made a greater profit than the Loyola Theatre, do you?

Mr. Corinblit: No, your Honor. I think the figures come out overall, but the total profit, no, your Honor.

(Testimony of Alex Schreiber.)

The Court: All right. Then the jury would be limited, would it not, then, that is, if the jury found that there was a conspiracy and the plaintiff has been damaged because [2236] of the first run situation, the jury would be limited then to the net profit of the Loyola, which would be \$66,000. They couldn't go over \$66,000?

Mr. Corinblit: There is only one difficulty there, your Honor. You will find there is a little different figure. The plaintiff suffered a \$36,000 loss here. We are going to put that on right now.

The Court: Well, all right. On a first run policy, the plaintiff couldn't have made more than \$66,000.

Mr. Corinblit: That is correct, your Honor.

The Court: You will agree to that?

Mr. Corinblit: Yes, sir. We will accept that proposition.

The Court: Then if the jury found there is a conspiracy as far as the 7 day policy is concerned, the plaintiff can't recover more than \$44,000.

Mr. Corinblit: For the profit.

The Court: For the profit.

Mr. Corinblit: Again, we still lost \$36,000.

The Court: You will add \$36,000 to that.

Mr. Corinblit: Right.

The Court: But you got \$44,000 profit.

Mr. Corinblit: That's right.

The Court: Now, the plaintiff can't recover \$66,000 and \$44,000, can he? [2237]

Mr. Corinblit: No, sir.

(Testimony of Alex Schreiber.)

The Court: In other words, they are limited to one or the other.

Mr. Corinblit: Yes, sir.

The Court: They can't add both of them together?

Mr. Corinblit: No, sir.

The Court: So under this theory, then the plaintiff's damage would be \$66,000 plus the loss, whatever it is.

Mr. Corinblit: That is correct. [2238]

\* \* \* \* \*

Q. (By Mr. Corinblit): Mr. Schreiber, there are only one or two other things that I want to ask you about before we put the accountant on the stand to bring these figures down to the actual damage figure.

When you testified that you would gross on the average at the Paradise on first run policy \$4500 a week, you were not stating to the jury that you would take \$4500 in every week at the Paradise?

The Court: That was the average gross.

Mr. Corinblit: Yes. I wanted to make that clear. I wanted to make it clear that some weeks would be up and some weeks would be down.

The Witness: That is correct.

Q. (By Mr. Corinblit): And the same thing, of course, is true with respect to the \$3800 gross on the 7 day policy? A. That is right.

Q. Now, bringing these figures down to the actual damage figures—those figures are in the possession of the accountant, is that correct?

(Testimony of Alex Schreiber.)

A. That is correct.

Mr. Corinblit: We have no further questions of Mr. [2240] Schreiber at this time.

#### Cross Examination

Q. (By Mr. Westbrook): Now, Mr. Schreiber, in reaching your opinion as to the average gross of the Paradise on a 7 day availability as the consistent policy, I take it you took into consideration the grosses that you actually achieved on 7 day pictures during the period in question, is that correct?

A. No, I didn't take into consideration the business we did on 21 day pictures or 14 day pictures or 7 day pictures or 14 day pictures and re-issue pictures and a picture that was four months old or maybe four years old. I didn't use those figures to arrive at \$3800 or \$4500.

Q. I would like to place before you Plaintiff's Exhibit 45-J in evidence, which is the payoff of the Paradise Theatre and consider with you for a moment then the actual performance of the Paradise Theatre on 7 day top-half features.

Now, starting with Exhibit 45-J, you played a picture on a 7 day availability at the top-half of the double bill during the week of August 23 to 29, 1950, did you not? A. What are the dates?

Q. 23rd to 29th?

A. Yes. I played—what I played I didn't hear.

Q. A picture on a 7 day availability as the top-half [2241] of a double bill?



(Testimony of Alex Schreiber.)

A. Yes, I played a 7 day picture but it was not a top picture.

Q. Your gross on that picture was \$1875, is that right?

A. Just a minute. We are not comparing—

The Court: Just a minute, Mr. Schreiber. [2242]

\* \* \* \* \*

Q. (By Mr. Westbrook): Your answer to my question is "Yes," is it not, Mr. Schreiber, that during that week your gross receipts were \$1875?

A. Yes, with a 7 day and 21 day picture. [2243]

Q. During the next week, you also played a 7 day picture as the top half of the bill and grossed \$2,139, is that right?

A. With a 7 day and 14 day picture.

Q. The next week, with a 7 day picture at the top half of the bill, you grossed \$1,522, is that right?

A. Yes, with a 21 day picture.

Q. The next week, with a 7 day picture at the top half of the bill, you grossed \$2,125?

A. That's right, with a 14 day picture.

Q. The next week, with a 7 day picture, you grossed \$1,585?

A. With a 14 day picture.

Q. Now, dropping down to October 5 to 11, 1950, you had the Paramount picture *Sunset Boulevard*, is that correct?

A. That is correct.

Q. On a 7 day availability. A. Yes, sir.

Q. There is no question in your mind that that was a top picture?

A. It was a top picture made by Paramount, that's right.

(Testimony of Alex Schreiber:)

Q. Your gross on that picture during that week was \$3,849, is that right?

A. With a 14 day picture. [2244]

Q. Dropping down to the week of October 19 to 24, you played a Columbia re-issue combination on the 7 day, is that correct?

A. Please, that is a 7 day re-issue about five years old or four years old.

Q. You played that day and date with another theatre in the Inglewood area, did you not?

A. I don't know.

Q. You played it day and date with the United Artists, do you not recall that?

A. No, I do not recall, because there is no indication here.

Q. Let's leave that one out, then, Mr Schreiber.

A. Academy didn't run those type of pictures.

The Court: Don't argue with counsel. Just answer the question.

Q. (By Mr. Westbrook): Going down to the picture *Born Yesterday* you testified yesterday that was a very outstanding picture, Mr. Schreiber, that played with 7 day availability, and your gross was \$3,718, is that right? That is in March 1951.

A. That is correct, with a 21 day picture.

Q. Now, April 4 to 10 you played a 7 day picture at the top half of the bill and grossed \$2,003, is that right?

A. With a 21 day picture, yes, sir. [2245]

Q. And on May 4 to 10 you played *Samson And*

(Testimony of Alex Schreiber.)

Delilah on a 7 day availability on its regular release and grossed \$2,291, is that right?

A. There is a question whether that was a regular release. That was about the third time the picture had been played, and it played with a 14 day availability.

Q. I think the stipulation is it played once before in the Inglewood area about a year and a half before.

A. Yes, and it played first run for a long time.

Q. But you had that picture and you grossed \$2,291, is that correct?

A. That is correct, with a 14 day picture.

Q. Now, the week of May 17-22, 1951, you had a 7 day picture at the top half of the bill and grossed \$1,795, is that right?

A. Yes, with a 28 day availability.

Q. That was the program that Mr. Lehman testified about yesterday, with Father's Little Dividend, an outstanding MGM picture, where he said he had out-booked the Fifth Avenue, is that right?

A. Yes, with a better program for the public.

Q. Dropping down now to the week of August 15, to 21, 1951, you had the top half of a bill filled with Sirocco, a Columbia picture, on the 7 day availability, is that right?

A. That is correct, both pictures were 7 days.

Q. Both pictures were 7 days.

A. One was a western and one was an action picture, yes, sir.

(Testimony of Alex Schreiber.)

Q. \$1,850 that week, is that right?

A. That's right.

Mr. Westbrook: Now, counsel, will you accept my total on these figures, subject to check, \$24,752?

Mr. Corinblit: Your addition is correct.

Q. (By Mr. Westbrook): Mr. Schreiber, we have 11 weeks of 7 day pictures at the top half of the bill here, right?

A. Starting with August 23?

Q. Yes. A. That's right.

Mr. Westbrook: Dividing 11 into 24,752, we come out with a figure of 2,250, counsel, is that correct?

Mr. Corinblit: That is correct. Your division is correct.

Q. (By Mr. Westbrook): That figure, Mr. Schreiber, is your average gross on 7 day pictures in accordance with your actual performance in the theatre, is that right?

A. That is with the second features 14 day, 21 day, 28 day and one picture 7 day combination.

Q. That is the actual figure, though?

A. That is.

Mr. Westbrook: Thank you very much. [2247]  
No further questions.

Mr. Johnston: No questions.

#### Redirect Examination

Q. (By Mr. Corinblit): Mr. Schreiber, Mr. Westbrook started August 23, 1950, and the total weeks, August 23 to the end of the play-off, is about

(Testimony of Alex Schreiber.)

55 weeks, is that right? A. That's right.

Q. You played in 55 weeks for 11 weeks with a 7 day picture at the top half of the bill, is that right?

A. According to Mr. Westbrook's figures, yes.

Q. That is about 20 per cent in terms of number of weeks, about 20 per cent?

A. Yes, about one-fifth.

Q. So on the average the amount of time between a 7 day picture in the Paradise Theatre is about what? Four weeks?

A. Every fifth week.

Q. We have got the Academy actual figures over here, right? A. Yes, sir.

Q. And this is what the Academy Theatre actually grossed on a 7 day policy, \$3,800 a week, isn't that right? A. That's right. [2248]

Mr. Mitchell: I object to that as being argumentative, and not proper cross examination.

The Court: Sustained.

Q. (By Mr. Corinblit): Would you compare, Mr. Schreiber—

Mr. Mitchell: I mean really that it is not proper redirect.

Q. (By Mr. Corinblit): Would you compare Mr. Schreiber, between the Paradise and the Academy whether you observed, did the Academy play 7 day pictures one every four weeks?

A. No, they played every single week and they played two top 7 day pictures on a program. They

(Testimony of Alex Schreiber.)

played Paramount and Fox, Paramount and Universal, Paramount and Warners, or a Fox and Warners, and they played top pictures on the order of Guys And Dolls and The Lieutenant Wore Skirts and the Searchers, and Meet Me In Las Vegas, those type of pictures.

The Court: Now, you mustn't argue the case to the jury. That is what you are paying your counsel for.

Mr. Corinblit: No further questions. [2249]

#### Recross Examination

Q. (By Mr. Westbrook): Mr. Schreiber, the first five weeks you were open you played consistently on a seven-day policy, did you not, with a top feature?

A. Yes, with 21 days and 14-day pictures.

Q. Now, you spoke about the Academy second features, Mr. Schreiber, during the time that you were open.

Do you recall the Monogram picture Show Dog that was playing at the Academy as the second feature the week that you opened the Paradise Theatre?

A. No, but if you show me the booking, if that is the booking that was the booking.

Q. You don't have any recollection of that picture, though? A. No, I do not.

Q. You don't recall it playing at the Academy?

A. No. One picture out of 110 pictures—no.

(Testimony of Alex Schreiber.)

Q. Let us go on to the next week. Do you recall a Republic picture *Savage Horde* which played as the second feature at the Academy Theatre during that week?

A. No, I don't. I don't even know the picture.

Q. Now, the following week you recall the Monogram picture *County Fair* that played at the Academy as the second feature? [2250]

A. No, I don't.

Q. The following week do you recall the Columbia picture *When You Are Smiling* that played as a second feature?

A. Yes, I think we played that picture, also. I think we may have played that as a first picture. I don't know.

Q. You recall that picture?

A. I remember the title, yes. What did it play with, Mr. Westbrook?

Q. Where?

A. *When You Are Smiling* at the Academy?

Q. At the Academy? If you want me to testify, Mr. Schreiber, I will.

A. Well, if it was playing with a picture like *King And I* and *Guys And Dolls* that they are talking about here all the time, it wouldn't make any difference what they had on there. You could have appeared in a picture and it would not have made any difference.

Q. Thank you, sir.

A. Let us talk about picture for picture.

(Testimony of Alex Schreiber.)

The Court: Mr. Schreiber, just a moment.

Q. (By Mr. Westbrook): In October 1950 do you recall a Republic picture Surrender playing the second half of a double bill at the Academy Theatre? A. When?

Q. October 1950. [2251] A. Surrender?

Q. Yes. A. I don't remember.

Q. Do you remember the Monogram picture titled Hidden City playing at the Academy in 1950, playing the second half of a double bill?

A. No, I don't remember that one either.

Q. Do you remember the Republic picture Rio Grande playing at the Academy Theatre on the second half of a double bill?

Mr. Corinblit: When was that?

Mr. Westbrook: November 1950. Excuse me. That one played top half, I am sorry.

The Witness: It must have been a big picture then.

Q. (By Mr. Westbrook): Do you recall a Monogram picture titled Hot Rod playing as the second half of a double bill at the Academy Theatre?

A. I remember the picture and if I am not mistaken we would have liked to have had that for a first picture at the Paradise.

Mr. Corinblit: Mr. Schreiber, don't volunteer any information. Just answer the questions.

The Witness: I am sorry.

Q. (By Mr. Westbrook): Do you recall the——



(Testimony of Alex Schreiber.)

Mr. Corinblit: Will you give us the approximate month? [2252]

Mr. Westbrook: January 1951.

Q. Do you recall the Republic picture *Pride Of Maryland* playing as a second feature at the Academy Theatre?

A. I think that was a race horse picture story and we would liked to have had that one, too.

Q. Do you recall that the Academy Theatre played *American Guerilla In The Philippines* after you played it first run Los Angeles?

A. What was that one?

Mr. Corinblit: First run Los Angeles?

Mr. Westbrook: I am sorry, I have the wrong picture.

Mr. Corinblit: And wrong year.

The Witness: We would liked to have that one also.

Q. (By Mr. Westbrook): Do you recall the Lippert picture *Three Desperate Men* playing the second half of a double bill at the Academy?

Mr. Corinblit: What month?

Mr. Westbrook: January 1951.

The Witness: No, I don't remember that picture.

Q. (By Mr. Westbrook): Do you recall the Eagle-Lion picture *Wicked City* playing as the second feature at the Academy Theatre in February 1951? A. No, I don't recall that.

Q. Do you recall the Monogram picture *Bowery Battalion* playing as the second feature in the Academy Theatre in March [2253] 1951?

(Testimony of Alex Schreiber.)

A. Bowery Battalion?

Q. Yes.

A. I think that was those Bowery boys, I am not sure.

Q. Do you recall the Republic picture *Secrets of Monte Carlo* playing as the second feature on a double bill at the Academy Theatre in June 1951?

A. What is the picture?

Q. *Secrets of Monte Carlo*.

A. From whom?

Q. Republic.           A. No.

Q. Do you recall the Monogram picture *According to Mrs. Hoyle* playing as the second feature in a double bill at the Academy Theatre in July 1951?

A. No.

Q. Do you recall the Monogram picture *Casa Manana* playing as the second feature at the Academy Theatre in July 1951?

A. From what distributor?

Q. Monogram.   A. No, I don't remember that.

Q. Do you recall the Monogram picture *Yukon Manhunt* playing as the second feature at the Academy Theatre in August of 1951? [2254]

A. No, I don't remember that one.

Q. Do you recall the Republic picture *Sea Hornet* playing at the Academy Theatre as the second feature in September, 1951?           A. No.

Mr. Westbrook: I have no further questions.

Mr. Corinblit: Counsel, will you state with me one fact—will you stipulate with me that each and

every picture that you mentioned was on a 7 day availability at the Academy Theatre?

Mr. Westbrook: Each and every picture I believe was on a 7-day availability and probably played after the Loyola Theatre played it first run.

Mr. Corinblit: No further questions.

The Court: You may step down.

The Witness: Thank you.

Mr. Corinblit: Will Mr. Joseph Youtan take the stand.

JOSEPH S. YOUTAN

called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Joseph S. Youtan. [2255]

Direct Examination

Q. (By Mr. Corinblit): Mr. Youtan, what is your occupation?

A. I am a certified public accountant.

Q. And how long have you been a certified public accountant? A. Twelve years.

Q. Are you a member of any societies?

A. Yes, I belong to the California Society of Certified Public Accountants.

Q. And have you been in active practice as a certified public accountant in California?

A. I have.

Q. Have you since 1949 or 1950 been the accountant for the plaintiff in this case, the Paradise Theatre Building Corporation? A. Yes, sir.

Q. You have been in charge of their books and

(Testimony of Joseph S. Youtan.)

records and in charge of preparing their profit and loss statements and so forth, is that correct?

A. Yes, sir.

Q. At my request, Mr. Youtan, have you prepared certain schedules pertaining to the losses at the Paradise Theatre based on a 52-week basis?

A. I have. [2256]

Q. As a matter of fact, your original schedules were prepared on a 54-week basis, is that correct?

A. Yes, adjusted to 52 weeks during the recess.

Q. You had to adjust them to 52 weeks in the light of the court's ruling this morning?

A. Yes.

Q. Now, I will ask you to place before you first the document which you have entitled "Paradise Theatre Recomputation of actual net loss for comparison with reconstructed net profits."

Now, in columns A and B you have set forth the figures showing the actual net loss—first, in column A the actual net loss as per the books of the Paradise Theatre from August 1, 1950 to July 31, 1951, is that right?      A. Yes, sir.

Q. That net loss for that period amounted to how much money?      A. \$35,000.

Mr. Mitchell: A schedule is being used and it is hard to follow without a copy of it. May we have a copy, or isn't there another copy available?

Mr. Corinblit: I am sorry there is not. I will be glad to have you look at this because the re-computation that had to be done—we have copies on the 54-week period.

(Testimony of Joseph S. Youtan.)

Do you have that extra copy? [2257]

The Witness: I don't have a third copy with the revision, although I do have several other copies on a 54-week basis.

Mr. Corinblit: All right.

Mr. Westbrook: May we have one of those?

Mr. Corinblit: Yes. Let me have the schedule.

The Witness: It would only take me about one minute to prepare a third copy, if you wish. [2258]

Q. All right. A. The basic information.

Q. Put the figures in so that counsel may be able to follow us.

Mr. Westbrook: Your Honor, while we are waiting for Mr. Youtan, I neglected to offer the schedule we just prepared on the blackboard, which I would like to do now.

The Court: It may be received in evidence.

Mr. Westbrook: I believe that would be joint distributors' Exhibit U.

The Clerk: Joint Distributors' Exhibit U.

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit U.)

Mr. Corinblit: Are these all the schedules now?

The Witness: Yes, a full set.

Mr. Corinblit: Thank you. (Handing document to counsel.)

Q. Now, turning to the schedule, under Column A, Mr. Youtan, per the books of the Paradise Theatre, there was a net loss for that period, August 1, 1950, to July 31, 1951, of how much?

(Testimony of Joseph S. Youtan.)

A. \$35,992.76.

Q. And taking the two-month period August 1, 1951, to September 30, 1951, a two-month period, there was a net loss for that period of how much?

A. \$3,312.72.

Q. So that the total net loss per the books for a total period of 60 weeks, which we will then reduce, was how much?      A. \$39,305.48.

Q. That is represented by the figure under Column C, is that correct?      A. Yes, sir.

Q. That is for a 60-week period?

A. Yes, sir.

Q. You made certain adjustments, that is, you withdrew certain items from the figures showing the total loss and the total figures, and I want to go into those for a minute. There was a figure in the total loss for the 60 weeks in terms of income of store rents, is that right?      A. Yes, sir.

Q. What was that total figure?

A. \$4,067.78.

Q. And that represented the rentals from two stores in the Paradise Theatre Building?

A. Yes, sir.

Q. That was withdrawn?      A. Yes, sir.

Q. That is from the gross receipts end of the picture. Now, from the expenses you also withdrew certain items. The first item you withdrew, I notice, is a proportion of an [2260] amount applicable to interest on the mortgage, is that correct?

A. Yes, sir.

(Testimony of Joseph S. Youtan.)

Q. Now, how much did you pull out, interest on the mortgage?

A. 12½ per cent of the total interest.

Q. What was the basis upon which you withdrew 12½ per cent of the total interest?

A. It was based on the square foot area occupied by the two stores as related to the total area of the Paradise Theatre Building.

Q. Do you have the total area of the Paradise Theatre Building?      A. I do.

Q. Would you state that for the record, please?

A. 20,718 square feet.

Q. And the total area occupied by the stores, two stores, is what area?

A. 2,596 square feet.

Q. And that percentage is about what?

A. 12½ per cent.

Q. So that where the Paradise was paying interest based upon a mortgage on a building which covered both the theatre and the stores, when you pulled out the gross receipts from the store rents, you pulled out the expenses, the [2261] proportionate expenses applicable to interest, is that correct?

A. That is correct, sir.

Q. You also pulled out a certain amount of money re taxes on the building, is that correct?

A. Yes, sir.

Q. How much did you withdraw?

A. \$288.33.

Q. And the basis upon which you withdrew those expenses from the schedule is what?

(Testimony of Joseph S. Youtan.)

A. The same basis as was followed with respect to the interest.

Q. That is the proportionate amount of taxes applicable to the store portion of the building?

A. Yes, sir.

Q. Now, you also withdrew, going down to the bottom of the schedule, re depreciation on the building, did you also withdraw a certain amount of money from the expense part of the schedule?

A. Yes, sir.

Q. How much did you withdraw?

A. \$715.01.

Q. What was the basis upon which you made that withdrawal?

A. The same formula that was followed with respect to interest and taxes. [2262]

Q. That is 12½ per cent of the total depreciation was withdrawn because that is applicable to the stores?      A. That is correct, sir.

Q. Now, you have one other item, and that is an item, legal and audit. How much did you withdraw from that expense item?      A. \$2,500.

Q. What was the reason for that withdrawal?

A. That was expenses which in my opinion were not proper ordinary expenses of the theatre.

Q. That is, they were extraordinary expenses and therefore in a fair operating statement should not be included for purposes here?

A. Yes, sir.

Q. They are perfectly proper in terms of the corporation itself, is that correct?



(Testimony of Joseph S. Youtan.)

A. Yes. They would be deductible for income tax purposes.

Q. But for purposes of a fair operating statement for here, you withdrew them, is that correct?

A. Yes, sir.

Q. The total amount withdrawn, you say, is how much? A. \$2,500.

Q. So that the adjusted loss, taking out the store rents — well, now, there is one other item. What change did [2263] you make with respect to the item of salary? Would you explain any change you made there, if there was any change?

A. Yes. There was a change in salaries to the extent of \$1,256.05.

Q. Would you explain that, please?

A. Yes, sir. The salaries expense total for the 60-week period included certain salaries that were incurred starting August 1, 1950, which is a date several weeks prior to the opening of the theatre. I have made a computation of the normal weekly salary expense of the theatre, using for this computation the actual expenses for a six-month period beginning October 1, 1950, and extending to March 31, 1951, a period which I considered a normal period.

Q. Before you go on, Mr. Youtan, I want to point to the figure to which I am referring and ask you, was there any adjustment made with respect to the item here, that is the salaries, less reimbursement?

A. I misunderstood your question there.

(Testimony of Joseph S. Youtan.)

Q. Yes, I thought you did. Would you explain the item which occurs in, I believe, all of the schedules—first, explain the item of miscellaneous income. What does it represent?

A. In which column, sir?

Q. First in the column under A, then the column under B, and then the column under C. [2264]

A. The miscellaneous income represented receipts from the use of the theatre for other than normal admissions, such as merchants advertising, special shows, occasionally the premises were rented to church organizations, and so forth.

Q. Now, when you made the adjustments that you have described, you came out with an adjusted net loss for a 60-week period for the Paradise Theatre of how much?      A. Of \$34,145.79.

Q. And that was for a 60-week period, is that correct?      A. Yes, sir.

Q. Now, in order to reduce that 60-week period down to a 52-week period, as involved in this case and in the light of the court's ruling, you arrived at certain figures. The first figure you arrived at was the figure Admissions Less Film Rental. What was that figure, the adjusted figure for the 52-week period?      A. \$45,189.35.

Q. How did you arrive at that figure?

A. That was on an average basis by determining the average of one week of a 60-week period and multiplying that by 52 weeks.

Q. The item Candy Concession in terms of income, there was an adjustment made there?

(Testimony of Joseph S. Youtan.)

A. Yes, sir.

Q. And that adjustment was made in the same manner? [2265]

A. In the same ratio.

Q. In other words, you went from 60 weeks to 52 by taking 52/60ths? A. 52/60ths, yes.

Q. The item Miscellaneous Income, you did the same? A. Same procedure, yes, sir.

Q. This resulted in a gross income of what amount? A. For 52 weeks, \$51,576.40.

Q. Did you also arrive at a proportionate amount of expense? A. Yes, sir.

Q. And what was that? A. \$81,169.41.

Q. And that left a net loss for the Paradise Theatre for the 52-week period of how much?

A. \$29,593.01.

The Court: May I ask the witness a question?

Mr. Corinblit: Yes, sir.

The Court: Can you tell me from your figures what was the amount charged against the operation in lieu of rent? If they were paying rent for the building, they would pay so much a month, 1,000 or 1,500. Can you tell me from your figures what they actually paid in lieu of rent? [2266]

The Witness: In a building-owner occupied there are certain expenses that are incurred in lieu of rent.

There would be depreciation on the building. I have these only as to a 60-week period but we can reduce it to 52.

The Court: All right.

(Testimony of Joseph S. Youtan.)

The Witness: As to a 60-week period there was \$5005.10 of depreciation.

There was \$6579.19 of interest on the mortgage.

There was \$2018.31 of taxes on the building, and there would be another item, your Honor, which I do not have written down, but it would be a portion of the total, and that is insurance expense, the total insurance. [2267]

\* \* \* \* \*

Q. (By Mr. Corinblit): Mr. Youtan, before we go on to the rest of the schedule, prior to our termination this morning, the court asked a question with respect to the matter of building charges in lieu of rent which are involved in the Paradise schedule as compared to the two other theatres, the Loyola and the Academy.

Have you made a comparison? A. I have.

Q. Would you give us that comparison, the total figure?

A. The total property charges of the Paradise Theatre [2272] for the 52-week period was \$13,488.91.

For the Loyola Theatre, \$17,552.63.

For the Academy Theatre, \$12,950.99.

Q. In setting the depreciation—I guess the depreciation item and the interest item are two substantial items in the Paradise schedule?

A. Yes.

Q. The depreciation item is depreciation on the building, is that correct? A. Yes, sir.

Q. How was that depreciation figured?

(Testimony of Joseph S. Youtan.)

A. It was figured on an estimated life of 50 years for the theatre computed on the straight line method.

Q. You figure the actual cost of the building, is that correct?      A. Yes.

Q. Do you have that cost of the building? I will show you Plaintiff's Exhibit 45-P-1, which I thought was in evidence, but I guess it isn't, but I will just show it to you, without putting it in evidence, and we have no objection to it going in evidence, and I will ask you if you can tell me what the total cost of the building was.

A. The total cost of the building was \$245,-147.20.

Q. So that the depreciation figures for the building were on a straight line basis, 50 years, on the basis of that [2273] cost, is that correct?

A. That is correct.

The Court: Maybe you'd better explain to the jury what you mean by straight line. You probably understand what it is, but some of the jury may not.

The Witness: The depreciation item is apt to be technical at times. The Internal Revenue Bureau permit us to use various methods, some known as the digits method, some known as the declining balance method, and the straight line method. The straight line method, however, is the one most commonly used. By taking the cost of an item, determining how many years it will last, and dividing that cost by those years on an even basis, so that if you had an asset that cost you \$1,000 and you deter-

(Testimony of Joseph S. Youtan.)

mined that it had a 10-year life, on that straight line method, you would divide that by the 10 years, charging off \$100, one-tenth each year.

Q. (By Mr. Corinblit): Turning again to the schedule, recomputing the actual net loss, there is one item I think you ought to explain, and this requires us to go back a minute to the adjusted loss for the 60-week period. That is the item under salaries less reimbursement by Paradise Bowl. What does that item represent?

A. That represents a proration of the salaries paid by the theatre to several employees who are also rendering services at the same time to an adjoining enterprise, the [2274] Paradise Bowl, and this represents the portion of their salary that was repaid by the Paradise Bowl to the Paradise Theatre.

Q. So that the net result is that the only salaries that are charged in this operating statement to the Paradise Theatre are salaries for services performed for the Paradise Theatre.

A. Yes, sir.

Q. And no charge for services performed any place else?      A. That is correct, sir.

Q. One other matter we should have here. Is there any place in this schedule with respect to recomputing the net loss of the Paradise Theatre, any salaries allowed for Mr. Alex Schreiber?

A. There are none.

Q. Do you know, was it true that there were

(Testimony of Joseph S. Youtan.)

some expense items that Mr. Schreiber did incur on behalf of the theatre?

A. He was reimbursed from time to time for nominal amounts that he expended.

Q. All right, but other than that, there are no and there were no moneys paid to him as salary charged in any of these statements, is that correct?

A. That's right, sir. [2275]

The Court: What was the amount paid the other officers of the corporation?

The Witness: Mr. Max Schreiber rendered services, and I think I can furnish you with the amount that he was paid. The expenses include the sum of \$1,961.50 to Max Schreiber.

Q. (By Mr. Corinblit): During that full year period? A. During that full year period.

The Court: For services rendered?

The Witness: For services rendered, yes, your Honor. [2276]

Q. (By Mr. Corinblit): Now, we come now to this final figure, the adjusted net loss for the 52-week period for the Paradise Theatre, and will you give us that figure again, please?

A. \$29,593.01.

Q. And that is the actual operating loss of the Paradise Theatre for that 52-week period, is that correct? A. Yes, sir.

Q. Now, have you, at my suggestion, prepared a statement showing what the net profit of the theatre would be, the Paradise Theatre would have been if it had operated on a first run basis, gross

(Testimony of Joseph S. Youtan.)

receipts of \$4500 per week with a film rental of 40 per cent and adjustments in expenses as testified to by Mr. Schreiber. A. I have.

Q. Would you simply tell us first under the 52-week basis at \$4500 per week, what would have been the total gross receipts?

A. They would have been \$234,000.

Q. And the film rental at 40 per cent would have been what amount? A. \$93,600.

Q. So, subtracting the film rental from the gross receipts, we would have what? A. \$140,400.

Q. Now, the Paradise Theatre had a candy concession and those concessions are still included in what amount?

A. The candy concession of \$5904.04 and miscellaneous income of \$2,156.68 is for the 52-week period.

Q. Which results in a gross income under these circumstances of how much?

A. \$148,460.72.

Q. All right. The total expenses which the Paradise actually incurred, not the increased expenses, but the total expenses actually incurred were how much? A. \$81,169.41.

Q. Now, Mr. Schreiber testified in the event they were playing first run policy they would have had certain increased expenses.

He testified there would be a salary increase of \$100 per week and for the year that amounts to how much? A. \$5,200.

Q. And the increase in the advertising of \$150



(Testimony of Joseph S. Youtan.)

a week or a total for the 52-week period of how much? A. \$7800.

Q. And miscellaneous increase of expenses at \$20 a week is how much? A. \$1040.

Q. And the total increased expenses are how much? A. \$14,040. [2278]

Q. So that the total expenses that the Paradise Theatre would have incurred operating on that first run policy would have been how much?

A. \$95,209.41.

Q. And that would have left a re-constructed net profit of what figure? A. \$53,251.33.

Q. What is the figure again? A. \$53,251.33.

Q. So that if the Paradise Theatre had operated on a first run basis under this set of facts, under the circumstances testified to, instead of losing \$29,593.01, it would have had a profit of \$53,251.33, so that the total amount which would have been received by Paradise instead of the loss, would have been how much? A. \$82,844.34.

Q. That is first run? A. Yes.

Q. Have you at my suggestion prepared a schedule showing what would have been the result had the Paradise Theatre, instead of operating on a first run basis, operated on a 7 day basis with gross receipts of \$3800 per week and a film rental equal to that paid by the Academy Theatre and an increase in expenses of \$1000 a year as testified to by Mr. Schreiber. Have you prepared such a schedule? [2279] A. I have.

Q. All right. Then, under those circumstances,

(Testimony of Joseph S. Youtan.)

the gross receipts—the total gross receipts of the Paradise Theatre would have been what figure?

A. \$197,600.

Q. And the film rental figured on the basis of the Academy film rental would have been what?

A. The same, \$88,191.40.

Q. And admissions less film rental?

A. \$109,408.60.

Q. And the candy concessions would remain the same under this theory? A. Yes, sir.

Q. And that figure is what? A. \$5,904.04.

Q. And miscellaneous income?

A. \$2,156.68.

Q. Giving us a total gross income of how much?

A. \$117,469.32.

Q. Now, operating on a 7 day basis, the expenses of the theatre as testified to by Mr. Schreiber, would include the present expenses, the actual expenses plus an increase of \$1000 a year. Now, the total expense again is what? A. \$81,169.41.

Q. The increased expenses for the 52-week would have [2280] been how much?

A. I used a figure of \$20 per week which amounts to \$1040.

Q. And the total expenses then would have been what figure? A. \$82,209.41.

Q. So the total reconstructed net profit on this basis would have been how much?

A. \$35,259.91.

Q. Give me the total gross again.

A. Total gross?

(Testimony of Joseph S. Youtan.)

Q. I mean the total loss.

A. The total loss was \$29,593.01.

Q. And the profit that would have been realized?

A. \$35,259.91.

Q. So that the amount that would have been received by the Paradise total is how much?

A. \$64,852.92.

Q. That is on a 7 day basis, is that correct?

A. Yes.

The Court: What was the amount on the first run?

Mr. Corinblit: Can you give the court that figure?

The Witness: Which amount?

The Court: It is on the paper there.

The Witness: The net results? [2281]

The Court: Yes.

The Witness: \$82,844.34.

Mr. Corinblit: We would like to mark for identification now the schedules prepared by Mr. Youtan.

Changes have been made in pencil and we will have them re-typed and the final figures supplied.

The Court: They may be marked for identification.

Mr. Corinblit: Thank you.

The Paradise Theatre re Computation of Actual Net Loss.

The Clerk: 68-A for identification.

(The document referred to was marked Plaintiff's Exhibit 68-A for identification.)

(Testimony of Joseph S. Youtan.)

Mr. Corinblit: The reconstructed statement of operations based upon receipts of \$4500 per week, that is first run, Exhibit 68-B.

The Clerk: 68-B for identification.

(The document referred to was marked Plaintiff's Exhibit 68-B for identification.)

Mr. Corinblit: The reconstructed statement of operations based upon the receipts of \$3800 per week as 68-C.

The Clerk: 68-C for identification.

(The document referred to was marked Plaintiff's Exhibit 68-C for identification.)

Mr. Corinblit: We will offer those exhibits in evidence. [2282]

Mr. Mitchell: There might be other testimony with respect to the Loyola and Academy. I am making the same objection.

The Court: Same ruling. They may be admitted in evidence.

The Clerk: 68-A, -B and -C.

(The exhibits referred to were received in evidence and marked as Plaintiff's Exhibits 68-A, 68-B and 68-C.)

The Court: Mr. Corinblit, will you move that paper down. I want to see your computations.

Mr. Corinblit: Yes, sir.

The Court: All right. Go ahead. I am just looking.

Q. (By Mr. Corinblit): Let me show you, Mr. Youtan, this. Is this the summary of some of the adjustments that were made? A. Yes.

(Testimony of Joseph S. Youtan.)

Q. Is this the one that you used?

A. That is correct.

Mr. Corinblit: All right. We will mark that as Plaintiff's Exhibit 68-D, the explanation of adjustments, Column C.

The Court: Same objection, same ruling. It may be admitted in evidence. [2283]

The Clerk: Exhibit 68-D.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 68-D.)

Mr. Corinblit: You may examine.

I think, your Honor, I did neglect to offer these computations in evidence.

Mr. Mitchell: Same objection.

The Court: Same ruling. It may be admitted in evidence.

Mr. Corinblit: Thank you, your Honor.

The Clerk: Exhibit 68-E.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 68-E.)

### Cross Examination

Q. (By Mr. Westbrook): I take it you take no responsibility for the assumptions upon which you made your calculations just now, Mr. Youtan?

A. That is correct.

Q. In other words, the result depends upon the assumption you start out with, is that correct?

A. I am afraid I didn't understand your second comment.

(Testimony of Joseph S. Youtan.)

Q. I say the result depends upon the assumptions you start out with. [2284]

A. Yes, to the extent of the figures that were furnished me by counsel.

Q. That's right, to the extent of the assumed gross of \$4500 a week or the assumed gross of \$3800 a week.

A. Yes, that is correct.

Q. They determine the result in the end?

A. Yes.

Q. You were present this morning when Mr. Schreiber testified as to the actual average gross of the Paradise Theatre on 7 day pictures, were you not?

A. Yes, I was.

Q. You recall we got to the average gross of \$2,250 at that time, that is weekly gross.

A. I was present when those figures were written.

Q. Taking the actual average weekly gross, Mr. Youtan, I would like to go through the same sort of computation with you and see where we come out. What would your gross be for 52 weeks on a weekly average actual gross of \$2,250?

A. I would have to compute that.

Q. Would you do that, please?

The Court: Do you need some paper?

The Witness: No, but could I have the exhibits that were just offered in evidence.

(Clerk handing documents to witness.)

The Witness: Thank you. The admissions figure that [2285] you have there, sir, on the other work sheet?

(Testimony of Joseph S. Youtan.)

Q. (By Mr. Westbrook): Is \$2,250 per week.

A. That would produce a gross on a 52-week basis of \$117,000.

Q. Do you recall the testimony assuming a 40 per cent film rental, Mr. Youtan? A. Yes, sir.

Q. Making that same assumption here, 40 per cent, what would your film rental be?

A. \$46,800.

Mr. Corinblit: Your Honor, I object to this. What relation could 40 per cent have to a gross of 117, when the testimony is the relationship between the gross and film rental.

The Court: Well, I think he has a right to use the gross he is using. You are using an assumed gross of \$4500. He is using an actual gross of 2,250.

Mr. Corinblit: But now he is coming to a 40 per cent film rental on——

The Court: You say 40 per cent is reasonable rental to pay.

Mr. Corinblit: It is a reasonable rental, your Honor——

The Court: Objection overruled.

Mr. Corinblit: All right. I wanted to get the [2286] statement in that it is a reasonable rental based on the gross receipts, but not here.

Q. (By Mr. Westbrook): Mr. Youtan, may I have the figure again? A. Yes. \$46,800.

Q. That would give you what you have called here admissions less film rental of \$70,200, is that right? A. That is correct, sir.

(Testimony of Joseph S. Youtan.)

Q. I will extend that out over here. The expense figure you developed with all these adjustments for the Paradise Theatre was what again, Mr. Youtan?

A. The actual expenses——

The Court: For the 12-month period.

The Witness: ——for the 12-month period was \$81,169.41.

Q. (By Mr. Westbrook): Now, on the actual average gross of \$2,250 a week, I take it the theatre would have suffered a loss, using the same other assumptions that Mr. Corinblit just used.

A. Yes, except that you did omit the revenue from candy and from miscellaneous sources.

Q. Let's get to that and then we will add that, Mr. Youtan.

A. All right. Fine. There would have been a loss of \$10,969.41 at that point. [2287]

Q. That is there would have been a loss of approximately \$11,000 from operations as a theatre, putting aside the concessions and other miscellaneous income?

A. Yes, sir.

Q. Adding that miscellaneous income in, the concession business and the other miscellaneous that you have down here, there still would be a loss?

A. There would have been a loss of \$2,908.69.

Q. Just so I can complete that, this is miscellaneous income here.

A. Candy concession and——

Q. What is that figure, sir? A. \$8,060.72.

Q. In other words, approximately a \$3,000 loss?

A. Yes, sir.



(Testimony of Joseph S. Youtan.)

Q. Using the actual average gross achieved by the Paradise on 7 day pictures.

A. Using the figure you gave me, sir.

Q. You saw that developed this morning.

Mr. Westbrook: Your Honor, I would like now to offer this document which I have headed——

The Court: It may be received in evidence.

Mr. Westbrook: I believe that would be Joint Distributors V.

The Clerk: Joint Distributor Defendants' Exhibit V. [2288]

(The exhibit referred to was received in evidence and marked as Joint Distributors' Exhibit V.)

Q. (By Mr. Westbrook): Now, Mr. Youtan, you mentioned one item of expense on here that you had modified somewhat in order to make an adjustment because some of the services rendered by Mr. Max Schreiber were chargeable to other enterprises that are immediately adjacent to the theatre, is that correct?      A. That's right, sir.

Q. You don't have any other expenses in your statements here with regard to the operations of the cocktail bar that Mr. Schreiber had out there.

A. Not to my knowledge.

Q. Or any other expenses that relate to the coffee shop.      A. No, sir.

Q. Or relate to the bowling alley.

A. No, sir.

Q. You are familiar with the physical premises, are you not?      A. Yes, sir, I am.

(Testimony of Joseph S. Youtan.)

Q. They are all adjacent to each other, is that not correct? A. That is true. [2289]

Q. Now, I would like to look with you for a moment at this subject of expenses of the Paradise Theatre.

Now, you would agree, would you not, Mr. Youtan, that from the viewpoint of management, it is quite unreasonable to treat interest on a contractual basis as an operating expense similar to the cost of film and supplies and things of that sort?

A. I believe it is a proper expense in arriving at the profit of an enterprise, yes.

Q. Are you familiar with the name W. A. Payton? A. Yes.

Q. He is recognized as an outstanding authority on accountancy, is he not? A. He is.

Q. I believe he is head of the accounting department of the Business Administration School of the University of Michigan?

A. He is back East somewhere. Either Michigan or Illinois. I presume it is Michigan.

Q. He is a recognized authority?

A. Yes, sir.

Q. Nevertheless you disagree with his proposition that it is unreasonable to treat interest or any other contractual or preferred income charge as an operating expense similar to the actual expenses of operating the business? [2290]

A. Right now that is out of the realm of accounting theory.

Q. I appreciate that.

(Testimony of Joseph S. Youtan.)

A. As a matter of practice, it is quite common to treat interest in the manner in which it has been treated in this instance.

However, I do have a high regard for Mr. Payton and I don't doubt your quotation. If that is what he says, I will recognize him as an authority.

The Court: May I ask a question. How does the Government allow you to treat interest on income tax returns?

The Witness: In any event, it is deductible. The only issue here is whether it is below a certain line or above a certain line in determining departmental profits and losses.

The Court: In determining the profit and loss in your report to the government, would you handle the interest item on an income tax return any differently?

The Witness: No. We have treated it in our statement and accounting here exactly as we do for income taxes. We have been consistent with the government's treatment.

The Court: Uncle Sam let's you get by with it?

The Witness: Not only get by with it, but he requires it to be treated that way.

Q. (By Mr. Westbrook): And he would let you get by with it if you took it off below the line?

A. That is right.

Q. It doesn't make any difference so far as Uncle Sam is concerned? A. Not at all.

Q. Would you also agree with Professor Pay-

(Testimony of Joseph S. Youtan.)

ton that especially is it important to avoid including interest or similar charges in expense in comparing the operating records of different companies?

A. I would agree with that, yes.

Q. The reason for that is, of course, interest has nothing to do with the operation of the company—it has to do with the way it is financed, doesn't it?

A. That is correct, sir.

Q. Now, on your expenses here, Mr. Youtan, you have two items of interest, haven't you?

A. I have.

Q. One of those is in the amount of \$6,579.00 on the 60-week period for mortgage interest?

A. Yes, sir.

Q. And the other is in the amount of \$2,664.37 for other interest?      A. That is right.

Q. In other words, approximately \$9,300 to round it off for interest charges?

A. Yes. [2292]

Q. Now, you will agree for the purpose of comparing the operating expenses of the Paradise with that of any other theatre, you would eliminate the interest charge?

A. I will agree with that, yes.

Q. And you have studied the Academy and Loyola operating statements, have you not?

A. I have seen them.

Q. Do you have them? I guess I have them.

I would like you to examine them, if you will, and state to me whether you find any interest

(Testimony of Joseph S. Youtan.)

charges made in the operating statements of those theatres? A. I did not find any.

Q. Now, going a little bit further into this subject of interest, Mr. Youtan, I would like to talk to you for a moment about just where this interest went.

I place before you a schedule that was produced by the plaintiff in this action, and which is headed "Paradise Theatre Building Corporation Balance Sheet as of August 31, 1950," which has been marked for identification as Defendant's Exhibit I-7, and ask you if you recall that that is a schedule prepared by you some time in 1950?

A. It has my name on it. I presume it was prepared by us.

Q. Now, looking at the liability items on that balance sheet, Mr. Youtan, you notice that there is here an item of [2293] trust deed payable Massachusetts Life Insurance Company, \$175,000. Is that right? A. That is right, sir.

Q. Now, that is the item of the mortgage interest payable or paid by the Paradise that you had in your expenses?

A. That is the principal upon which interest was paid, yes.

Q. Right. Now, there is another item here which is headed "Note Payable Officer and Stockholder \$102,400."

Now, do you know who was the officer and stockholder referred to there?

(Testimony of Joseph S. Youtan.)

A. I would assume that it was Mr. Alex Schreiber and possibly Mr. or Mrs. Alex Schreiber.

Q. Do you know whether or not that was an interest bearing note?

A. I do not recall the note itself, but I am in position to testify as to the amount of interest included in our figures on those obligations.

Q. Would you give us those figures, please?

A. Yes. The interest figure on the 52-week statement included the sum of \$96.58 paid to Myrtle Schreiber.

Q. Now, do you know whether there were any deferred charges set up on interest to Mrs. Schreiber?

A. There are no other accrued or deferred interest amounts included in the expense figures used in these exhibits. [2294]

Q. Did the books of the corporation reflect any obligation to pay Mrs. Schreiber interest in the future on account of the use of this money in the past?

A. I would have to examine the books, but off hand I don't believe there was any accrued interest set up.

Q. You are not sure of that one way or the other?

A. I am not sure, but I can answer that quickly by reference to the books.

Q. Do you know what—

Mr. Corinblit: Do you want the books?

(Testimony of Joseph S. Youtan.)

Mr. Westbrook: You sit down, please.

Mr. Corinblit: Do you want the books?

Mr. Westbrook: No, I don't. Let me proceed with my examination.

Q. Do you know what the interest items are other than the mortgage interest shown on your expense items were—that is, to whom they were payable?      A. Yes, sir.

Q. Will you so state?

A. The item in column D designated "Interest Mortgage of \$6,578.19" was paid entirely to the Massachusetts Mutual Life Insurance Company on the trust deed.

Q. That is the item you already referred to?

A. Yes. The other interest category showing a total of \$2,664.37 is for a 60-week period included \$509.70 to the [2295] Manufacturers National Bank of Detroit, \$1265.72 to the Q.R.S. Neon Company, the John P. Filbert Company, the company supplying the theatre seats and one or two other equipment contracts. And the sum of \$114.13 to the California Bank.

Q. All of those charges are included in the interest figure, the \$9,300 round figure?

A. Yes.

Q. Now, just while we have the balance sheet here, Mr. Youtan, you have referred to the sum of \$450,000 in this case being the amount of the investment in the Paradise Theatre Building Corporation.

(Testimony of Joseph S. Youtan.)

Will you state what the amount of the capital investment actually was?

A. From the standpoint of capital stock issued, the amount is \$25,000.

Mr. Corinblit: I object to that and move the answer be stricken on the ground it assumes a fact not in evidence. The testimony was as to the cost as distinguished from contributions to capital or in terms of loans.

The Court: Objection overruled. [2296]

Q. I didn't hear your answer above Mr. Corinblit's objection, Mr. Youtan. Will you state it again, please?

A. Insofar as capital stock is concerned, the sum of \$25,000 is shown as having been issued.

Q. That represents the stockholders' equity in the corporation, is that right, as of the time of its organization?

A. As far as actual capital investment, exclusive of loans to the corporation, is concerned.

Q. We will come to the loans in a moment.

A. Yes, sir.

Q. The loans we have already referred to indicate that the financing on this theatre was done by the extension of a loan of \$102,400 by either Mr. Schreiber or Mrs. Schreiber, you are not sure whom; the extension of a loan of \$92,000 by others unidentified on here—do you know who they are?

A. I could give you them by reference to the books, although by memory I know who they are.



(Testimony of Joseph S. Youtan.)

Q. Let's have them.

A. They are a number of relatives, friends, business associates, and I also believe there were several bank loans in there secured by collateral owned by Mr. and Mrs. Schreiber.

Q. A good part of the financing of this corporation was on instalment contracts from equipment suppliers and from the Massachusetts Life Insurance Company, isn't that right? [2297]

Mr. Corinblit: I object to that as calling for a conclusion as to "a good part."

Mr. Westbrook: We will have the figures.

The Court: Overruled.

The Witness: The sum of \$175,000 was furnished by the Massachusetts Mutual Life Insurance Company, and according to the balance sheet, \$81,466.21 represents construction and equipment contracts.

Q. (By Mr. Westbrook): With about 194,000 invested by the Schreibers; I say invested, loaned by the Schreibers to the corporation, is that correct? A. Plus a portion of the \$92,000.

Q. Yes. I add 92 and 102 and that gives me 194.

A. That's right, sir.

Q. The only risk capital in this enterprise was \$25,000 capital stock, is that right?

Mr. Corinblit: Object to that, your Honor, calling for a conclusion.

The Court: Overruled. This is an expert witness.

The Witness: There again, your Honor, we get into the realm of accounting theory.

(Testimony of Joseph S. Youtan.)

Q. (By Mr. Westbrook): Isn't capital stock ordinarily referred to as risk capital?

A. Ordinarily, but under certain circumstances loans may also be considered a risk capital depending upon the [2298] personal liability attached thereto.

Q. And that is something you are not in a position to determine one way or another?

A. I do not know to what extent the loans could have been subordinated or could have been guaranteed, and so forth.

Q. We will assume if it came to a lawsuit between Mr. Schreiber and Massachusetts Life Insurance Company, Massachusetts Life Insurance Company would win out, but putting that aside, the \$25,000 is the risk capital, is that right?

A. Yes, sir.

Q. Going back to your recomputation of the actual net loss of the Paradise Theatre, Mr. Youtan, you will notice the item of \$2,556 telephone expense. I would like you to examine the profit and loss statement for the Loyola Theatre that you have before you and tell me what the telephone expense on that statement is.

A. For a nine-month period ending September 30, 1950, the amount is \$331.53.

Q. Take a 12-month period there.

A. For a 12-month period, we have \$460.07.

Q. \$460 as against \$2556.

A. There is an exception to that, sir.

(Testimony of Joseph S. Youtan.)

Q. Yes?

A. With respect to an item at the bottom of Column D, Less Pre-opening Expense. [2299]

Q. You made some adjustment of that figure?

A. Yes, sir. Included in that figure is an elimination of \$337.

Q. \$337?

A. Yes. Just one moment, sir. Yes, of \$337.79.

Q. Now you are giving me a figure in effect of 2200 as against—what was it, 460?

A. Yes, sir.

Q. You know it to be a fact, do you not, Mr. Youtan, that the greatest part, and probably about 1700 or 1800 of that telephone item you have on here was occasioned by the fact that Mr. Schreiber was in Detroit during much of the time covered by the period you computed these expenses for?

A. That is a reasonable assumption, yes.

Q. Let's call that 1750, shall we? I take it you wouldn't regard that as a normal expense of theatre operation, would you?

A. Again it becomes a question of just how necessary it would be for Mr. Schreiber to conduct the affairs of the theatre by long-distance telephone from Detroit. I am not in a position to offer an opinion on that.

Q. If he hadn't been in Detroit, it wouldn't have been necessary, would it?

A. If he were here, there would have been fewer telephone bills. [2300]

(Testimony of Joseph S. Youtan.)

Q. Let's go down to another item here, rather, two items. You notice you have an item for travel, \$632, and an item for auto expense in the amount of \$1,684. Together, as I calculate it roughly, they make about \$2,300, right?

A. Yes, and again the adjustment at the bottom eliminates a portion of that expense.

Q. All right. Let's eliminate that.

A. There is an elimination of \$325.24 of the travel and an elimination of \$293.56 of the auto.

Q. That is about \$600, right, in round figures?

A. Yes, sir.

Q. So that would leave us with \$1,700 on auto and travel expense.           A. Yes.

Q. Now, will you turn to the Loyola operating statement for a full year and tell me how much they have down for travel and auto expense?

A. I see an item here called travelling, \$312, for a 12-month period. I don't know if the item expressage would be comparable with what we have included in our auto expense.

Q. You notice on your statement you have an item for film delivery. I suggest that would be comparable to expressage.

A. Right. I see no other items that could match up with that. [2301]

Q. That is 300?           A. 312.

Q. That is about \$1,400 more in your expense statement for the Paradise, is that right?

A. Approximately.

(Testimony of Joseph S. Youtan.)

Q. You are familiar with the operation of the theatre? You kept its books during this period?

A. Yes.

Q. You know Mr. Max Schreiber didn't buy and book film for the motion picture theatre, don't you?

A. I believe Mr. Lehman was rendering the services.

Q. He rendered those services and was paid for that, wasn't he? A. I believe so.

Q. I notice another interesting little item on here, Mr. Youtan. You see the item of \$670 down about the middle of the column? A. Yes, sir.

Q. What was that for?

A. That was premium paid by the corporation on a policy on the life of Alex Schreiber wherein the corporation is the beneficiary.

Q. Of course, the corporation was wholly owned by Mr. Schreiber and members of his family, wasn't it? A. That's right. [2302]

Q. Will you go down the Loyola statement and also the Academy statement and tell me if you find any similar item of expense in that operating statement?

A. There is an item of insurance, and the statement does not show a breakdown of the contents. If it is not in there, I would say there is no officers' life insurance.

Q. You have got an item of insurance, too. That ordinarily refers to casualty insurance carried on the building, and so on.

(Testimony of Joseph S. Youtan.)

A. And various other types.

Q. Yes, sir. [2303]

Q. Let us compare the insurance figures. In toto, then. You have got \$670 for officer life insurance. Is that correct? Is that on your statement?

A. Yes, sir.

Q. And then another insurance item of \$2826.

A. That is right, sir.

Q. Making a total, as I calculate it quickly, of about \$3500? A. Yes, sir.

Q. Now, what is the total insurance charged on the Loyola? A. \$1847.89.

Q. Call it \$1850, shall we? A. Yes.

Q. That is a difference of about \$1650, is that right? A. Yes.

Q. Now, you want to use the \$670——

A. I would like, however, to qualify my answer, if I may.

Q. Please do.

A. The insurance figure on our statement contains all types of insurance including compensation, workmen's compensation insurance liability, public liability, fire on the theatre, theft, and all other types of operating insurance.

The statement here of the Loyola has the item of insurance [2304] classified under the heading of "Fixed Charges" which would lead me to believe that it would not include items such as compensation insurance and normal theatre insurance expenses, which should be classified on a cost basis under house expense.

(Testimony of Joseph S. Youtan.)

Q. You mean you put some insurance——

A. No.

Q. ——in here that shouldn't be here?

A. No, no. You are making a comparison of our insurance with the insurance shown on the Loyola Theatre statement, all of which is under the heading of "Fixed Charges."

Q. Well, I am taking the item you have on here for insurance as an item of operating expense and I don't know whether it is that or not, Mr. Youtan. You can tell us. I am trying to compare that with the total shown for insurance charges on the Loyola.

A. In order to make a proper comparison, it would be necessary for us to reduce our figure of insurance to that portion which would properly be compared with the heading of "Fixed Charges" shown on the statement of the Loyola Theatre.

Q. Let us put aside the question of casualty cover. That is a little complicated.

A. And workmen's compensation.

Q. You agree that the Loyola insurance figure is \$1800 odd?           A. \$1847.89. [2305]

Q. As against the \$2800 figure shown on your statement for theatre insurance?

A. That is right.

Q. Now, you have no reason to believe that that \$1800 includes any life insurance, have you?

A. No, I have no reason to believe that.

Q. And the item of life insurance is \$670?

A. Yes, sir.

Q. Now, Mr. Youtan, it is a fact, is it not, that

(Testimony of Joseph S. Youtan.)

you are not in position to certify that any single one of these items of expense shown on this re computation of actual net loss that has been presented, is a necessary expense of theatre operation?

A. That would call for an opinion that I am unable to express.

Mr. Westbrook: I have no further questions, your Honor, except that—

The Court: It may be admitted in evidence.

Mr. Westbrook: Thank you. I hadn't quite gotten to it.

The Court: This is Friday afternoon.

Mr. Johnston, do you have any questions?

Mr. Johnston: No, your Honor, I do not.

Mr. Corinblit: I have a few minutes of redirect, your Honor. We might as well take our recess at this time.

The Court: How long will your redirect examination be? [2306]

Mr. Corinblit: About 15 or 20 minutes.

The Court: Ladies and gentlemen, we are about to take another recess and again it is my duty to admonish you that you are not to discuss this case with anyone and you are not to permit anyone to discuss it with you. You are not to formulate or express any opinion as to the rights of the parties until the case has been finally submitted to you.

With that admonition, we will now be in recess until 15 minutes after 3:00 o'clock.

(Short recess.) [2307]



(Testimony of Joseph S. Youtan.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

The Court: You may proceed.

### Redirect Examination

Q. (By Mr. Corinblit): Mr. Youtan, Mr. Westbrook was making some comparisons between the expenses that were charged to the Paradise Theatre, a comparison with the Loyola Theatre. I want you to look at two items. I think Mr. Westbrook's figures total, the figures on interest, telephone, travel, auto, life insurance—what is the total?

Mr. Herscher: \$13,120.

Q. (By Mr. Corinblit): \$13,120. I want you to compare two items for me, Mr. Youtan. Do you find an item in the Loyola Theatre expense items called Administration? Look for the full year period.

A. Yes, sir.

Q. Administration. What is that item?

A. There are three components.

Q. Give me the total.

A. The total Administration was \$16,457.80.

Q. Now, will you give me the same item or equivalent item, Management and Booking, for the Paradise? [2308]

A. The amount for the 60-week period was \$2,054.94.

Q. Did you compute that to a 52-week period?

A. I have made a computation for a—just one

(Testimony of Joseph S. Youtan.)

moment—for a 42-week period, and that item was \$1,780.90.

Q. \$1,780.90. So that the overage of the Loyola over the Paradise, if my figures are right, for that one item is \$14,666.90, is that right?

A. Your arithmetic is right.

Q. What was the total of all three items referred to again?

Mr. Herscher: \$13,120.

Q. (By Mr. Corinblit): That involved four items. Now, Mr. Youtan, do you know what is included in that Administration charged to the Loyola?

A. I have no idea.

Q. You have no idea. Do you know whether or not there is included in that item a proportionate share of the income taxes paid by all of the National Theatres Corporation in the Fox chain, do you know that?

Mr. Johnston: Object to that on the ground there is no foundation laid.

The Court: Sustained.

Mr. Corinblit: All right. Mr. Johnston, will you—

The Court: How would he know about it?

Mr. Corinblit: Mr. Johnston, will you not stipulate [2309] that that item is included in that figure?

Mr. Johnston: I don't know whether it is or not. I am no accountant. I don't keep the books. I don't have any idea.

Mr. Corinblit: Do you know, Mr. Johnston, whether or not an item of maintenance of a pent-

(Testimony of Joseph S. Youtan.)

house on Washington Boulevard and Vermont is included in that item?

Mr. Johnston: Mr. Corinblit, if you want me to testify in this case, I will. I think this is highly improper to ask me questions of this nature, and you know it is.

Mr. Corinblit: Mr. Johnston, I think we have already——

Mr. Mitchell: Your Honor, aren't we arguing this case a little too soon.

The Court: You are arguing the case and this is not the proper time. I don't want to start an argument at half past three on Friday afternoon.

Mr. Corinblit: It may be, your Honor, that we can bring in the accountant.

The Court: All the purpose of this testimony is to get the figures, and when you get the figures, I will give you time to argue to the jury, and if you want to take the entire time to argue this point, it is your prerogative.

Mr. Corinblit: We have the problem that we have that statement, but we don't have that item broken down. [2310]

The Court: It is administration expense, one against the other.

Q. (By Mr. Corinblit): There is one item, Mr. Youtan. Do you have the figure for the Loyola taxes?

The Court: Talking about real estate taxes?

Mr. Corinblit: Yes.

The Witness: Yes, I have.

(Testimony of Joseph S. Youtan.)

Q. (By Mr. Corinblit): What is that figure?

A. \$8,480.30.

Q. \$8,480.30, and what tax figure do you have for the Paradise for the year?

A. For the 52-week period, \$1,749.20. [2311]

The Court: Real estate taxes.

The Witness: Yes, your Honor.

The Court: Why would the taxes of the Loyola be so much greater than the taxes of the Paradise?

Q. (By Mr. Corinblit): Will you explain those circumstances to the court?

A. Yes, I will be glad to. Why the real estate taxes on the Paradise were less. This amount represented the taxes for the Los Angeles County fiscal year covering the period July 1, 1950 to June 30, 1951, based on assessed valuations on the first Monday of March, 1950. At that time the Paradise Theatre building was in process of construction. It had not been completed and therefore the assessment was based on the land and a portion of the construction in process.

Q. That is why the figure in the Paradise statement is \$1749 as compared to the Loyola \$8,480?

A. That is right.

Q. So the total differences of these two items, being larger in the Loyola than they are in the Paradise statement, this total—would the total be reached by \$1466.90 plus \$6731.10?

A. That is right.

Q. With respect to those two items?

A. Yes. [2312]

(Testimony of Joseph S. Youtan.)

Q. Now, with respect to the item of interest that was referred to, Mr. Youtan, contained in the Paradise operating statement, some of the interest was paid on loans to third parties, is that right?

A. That is right.

Q. To your knowledge were there some of those—a considerable amount of those in which Mr. Schreiber made a personal guarantee of those loans?

The Court: This witness testified that he didn't know.

Mr. Corinblit: All right, your Honor.

The Court: He testified he didn't know.

Mr. Corinblit: All right, sir. We may have occasion to put in the actual guarantees.

I want to turn to Mr. Westbrook's Exhibit V in which the figure showed a loss in the Paradise Theatre, assuming that they grossed \$2,250 a week, which Mr. Westbrook showed was the average weekly gross on the theatre, on the pictures on the 7 day availability in the Paradise Theatre—that is to say he took the weekly grosses for the pictures in the Paradise Theatre on the 7 day availability with no other adjustments or increase, and made an average and the average was \$2250 a week. And then he asked you to figure with him what would have been the results in the Paradise Theatre under those restricted assumptions of \$2250 a week, and he showed that the Paradise Theatre, under those circumstances, would [2313] have lost \$2,908.69 under Defendant's Exhibit V.

(Testimony of Joseph S. Youtan.)

Now, what was the Paradise Theatre's actual loss under the operation? Do you have that?

A. \$29,593.01.

Q. So under Mr. Westbrook's assumption, the Paradise Theatre would have lost \$26,684.31 less than it in fact did, and there would be that much back in the Paradise Treasury under Mr. Westbrook's assumption, isn't that right?

Mr. Mitchell: I object to that as leading and suggestive and argumentative and fails to consider the fact the man wouldn't even bid.

The Court: Now, Mr. Corinblit, you are just arguing this case. You are arguing this case through the witness, and I think it is going a little bit too far.

You are entitled to bring out any facts you want to, but I don't think you are entitled to argue the case through this witness.

Mr. Corinblit: I respectfully submit, your Honor, in this case it is not argument.

The Court: I think it is.

Mr. Corinblit: All right, sir.

The Court: And I have the last guess.

Mr. Corinblit: Yes, sir.

The Court: You just go ahead.

Q. (By Mr. Corinblit): Now, finally, Mr. Youtan, I would [2314] like to place before you the schedules that were admitted in evidence. I think I have one of the originals. I will give you 68-A and I want to ask you this question first, and then we will put the figures on the board. Mr. Westbrook

(Testimony of Joseph S. Youtan.)

showed that there were some \$13,000 in expenses that he asked you about. If those \$13,000 in expenses had been eliminated from your computation, what effect would that have had upon the net computation of damage?      A. None whatever.

Q. None at all?      A. None at all.

Q. All right. Now, let us see if we can show that on a 52-week basis on a first run theory, the gross admissions would have been what?

A. \$234,000.

Mr. Mitchell: I object to this as being improper redirect examination. He has already had all these figures. He is just repeating the figures that he already has.

The Court: He is trying to argue the case. The figures are before the jury and before the court, and when the time comes you can argue these matters. You can put them on the board and then argue your case to the jury.

Mr. Corinblit: Let me make a point, if your Honor please. You admitted into evidence Defendants' Exhibit W. Counsel cross examined Mr. Youtan on it and I don't know what [2315] inference Mr. Westbrook was trying to bring out or what assumption the jury may have——

The Court: He hasn't told the jury as to what his inferences or assumptions were. He is waiting until the proper time to tell the jury, and then you can present to the jury your assumptions and your arguments.

Mr. Corinblit: Well, I would just like to make

(Testimony of Joseph S. Youtan.)

the offer, then, your Honor, and if your Honor wants to rule on it, we can move ahead.

I would like to take these figures and subtract them from both sides of Mr. Youtan's figures and show the results would be the same, if I may do that.

The Court: Why can't you do that at the time of your argument? The figures are before the jury. Why can't you put them on the board when you argue to the jury. They will show exactly the same as the witness says.

Mr. Corinblit: All right. That may be a faster way.

Q. Now, Mr. Youtan, Mr. Westbrook asked you a question and used the word "certification" in the question. He asked you whether you could certify to the expense figures in the books and records of the plaintiff in this case and I want to make clear that the word "certify" as you understand the term when Mr. Westbrook asked you that question, does that have a technical meaning? A. Yes.

Q. What is it?

A. The implication of the word "certification" would be that certain recognized procedures would have to be followed in order to make a statement that certain figures have been certified.

Those procedures would involve some such as the examination of vouchers, purchase orders, verification with suppliers and so forth, procedures which I was not called upon to do for the Paradise Theatre.



(Testimony of Joseph S. Youtan.)

Q. And as a matter of fact, those are extraordinary procedures as distinguished from the usual procedures? A. They are not customary.

The Court: I understood from your testimony you took the figures that the company gave you? You didn't try to verify the accuracy of those figures? You didn't go down to the box office and check to see if all the money was taken in that day reported was taken in?

The Witness: No, sir.

The Court: You just took the figures presented to you?

The Witness: That is correct. [2317]

Q. (By Mr. Corinblit): And these figures are the same figures you prepared for the income tax purposes, is that right? A. Yes, sir.

Q. And as you prepared for the profit and loss statements for the theatre? A. Yes, sir.

Q. And they are used by you in your business, isn't that right, and used by the plaintiff in the operation of their business? A. Yes, sir.

Mr. Corinblit: All right. No further questions.

#### Recross Examination

Q. (By Mr. Westbrook): Mr. Youtan, just so the record is clear and not confused by your inability to certify to the correctness of these figures, I take it it is correct that you have no basis on which to form an opinion as to whether any of these expenses are actually necessary in the operation of the theatre, isn't that correct?

(Testimony of Joseph S. Youtan.)

A. If you are using the word opinion as used in relation to certification, I would say I am unable to offer that type of an opinion. I am in a position to offer an opinion based on my knowledge of what is customary in the theatre business [2318] in relation to related companies, in relation to experience, to subsequent experience of this theatre, and so forth.

Q. You are not a theatre operator?

A. No, but I am familiar to a degree with the operations and the expenses of theatres.

Q. As shown by the books.

A. Books and other records I have seen from time to time.

Q. Mr. Corinblit in his argument here asked you to give him a figure for administration on the Loyola statement and you gave him a figure, didn't you?

A. Yes, sir.

Q. You don't know what that included?

A. No, sir.

Q. It includes three items on there, doesn't it, that figure?

A. Yes, sir.

Q. It includes an item for rentals?

A. That's right.

Q. It includes an item for merchandise?

A. Yes, sir.

Q. Those have nothing to do with buying and booking, have they?

A. Not for those two items, no, sir.

Q. There are a number of items on the Paradise recomputation [2319] of actual net loss that you made here that I would like to ask you about. There

(Testimony of Joseph S. Youtan.)

are legal and audit fees in the amount of \$2,236.37. I presume a good part of those were paid to you, were they not?

Mr. Corinblit: I object to that, your Honor, as being improper recross examination.

The Court: There was no question raised about that.

Mr. Westbrook: I would like to know whether those are properly charged to administration. Mr. Corinblit was making a very facetious and inadequate comparison with the total administration charge.

The Court: You can show, if you want to, what were the items of administration on the \$16,451.

Mr. Westbrook: I take it the objection is to my asking Mr. Youtan if he got paid that. I will withdraw that and ask him if that figure is not shown on the statement, \$2,236.

Mr. Corinblit: Same objection, your Honor.

The Court: You may answer.

The Witness: I would like to have the question repeated.

Q. (By Mr. Westbrook): Is there not an item of legal and audit fees on your recomputation of that net loss in the amount \$2,236.37?

A. Yes, sir. [2320]

Q. Have you got an item here of advertising and public relations. Incidentally, before I go on, you don't find any legal and audit expense on the Loyola or Academy statements, do you?

A. No, sir.

(Testimony of Joseph S. Youtan.)

Q. For all you know, that is included within the administration expense figure.

A. It is possible.

Q. It would be a proper charge to such an account, would it not?           A. Yes, it might be.

Q. You have got an item here of advertising and public relations. Are you able to break that down into two parts, one for advertising and one for public relations?

A. It would be difficult at this time.

Q. You don't have any way of doing that?

A. It could be done with considerable——

Q. You are familiar with the fact that the Paradise Theatre retained a public relations consultant during the period, are you not?           A. Yes, sir.

Q. And that charge is included here within the advertising figure, I take it?

A. Yes, subject to the elimination of \$1,690 of it, which is part of your \$4,784. [2321]

Q. That was just simply done on an overall basis, I mean you made an adjustment to try to get rid of certain pre-opening expenses, isn't that right?           A. Yes.

Q. But you are not able to state what part of the remaining figure is attributable to this public relations man?           A. No.

Q. You don't find any public relations figure on the Loyola and Academy statements, do you?

A. No, sir.

Q. Now, I would like to call your attention to another item here, stationery and office expense, in

(Testimony of Joseph S. Youtan.)

the amount of \$363. I believe that's right, isn't it?

A. Yes, sir.

Q. You don't find any such item on the Loyola and Academy statements, do you?

Mr. Corinblit: Your Honor, I will object to the question on this ground. If Mr. Johnston will bring in the auditor to show what is included in the administration expenses, we will stipulate those figures.

The Court: Overruled. I want to get rid of this witness this afternoon. Otherwise, we are going to have to call him back here on Tuesday morning.

The Witness: My figure is correct, subject to a portion that is eliminated in the \$4700 item. [2322]

Q. (By Mr. Westbrook): Let's just put down \$300 in round figures.

A. I can give you the——

Q. It isn't important, Mr. Youtan.

A. The elimination happens to be substantial in this case. It was \$225 of the \$363.

Q. That leaves you with \$125, roughly?

A. 138.

Q. The plain fact is, Mr. Youtan, you don't know whether there is any basis as an accountant for comparing administration costs with buying and booking fees, as Mr. Corinblit did a few minutes ago here?

A. I have no knowledge of the contents of the administration expense.

Mr. Westbrook: No further questions, your Honor.

(Testimony of Joseph S. Youtan.)

The Court: May this witness be excused?

Mr. Corinblit: Yes, sir.

The Court: You may be excused.

The Witness: Thank you. Wasn't I to make copies of some of these?

Mr. Corinblit: We have offered the penciled copies by Mr. Youtan. You should leave them here, Mr. Youtan, and we will check them out from the clerk and then we can make the copies.

(Witness excused.) [2323]

Mr. Corinblit: Your Honor, I think at this time we would like to make an offer of certain matters which probably ought to be done out of the presence of the jury.

The Court: Ladies and gentlemen of the jury, you are about to be excused until 10:00 o'clock on Tuesday morning. I wish you would remember the admonition of the court given to you on Fridays so far. Be careful. You are becoming very, very valuable now to the government in this case, and we don't want anything to happen to you.

Remember the admonition of the court that you should not discuss this case with anyone nor allow anyone to discuss it with you, and you should not express or formulate any opinion as to the rights of the parties until this case is finally submitted to you.

With that admonition we will now be excused until 10:00 o'clock on Tuesday morning.

Will you retire as quietly as possible, as court is still in session.

(The following proceedings were had outside of the hearing and presence of the jury:)

Mr. Corinblit: I wonder if your Honor has had an opportunity to read the memorandum.

The Court: Yes, I have read your memorandum.

Mr. Corinblit: With respect to the offer that we would like to make. [2324]

The Court: I have read your memorandum.

Mr. Corinblit: Now, in a formal way, then, embodying the terms of the offer that are included in the memorandum, we would like to make these offers in the alternative way in which they are made, that is, the offer under A, page 1, of the plaintiff's memorandum——

The Court: Just make your offer. Don't make any argument.

Mr. Corinblit: Yes, sir. In the event the court declines to accept the offer under A, on pages 1 and 2 and partially on 3, we make the offer of proof with respect to what is set forth under B, pages 3, 4, 5, and 6.

The Court: Can't your memorandum be considered as your offer?

Mr. Corinblit: I believe so, your Honor. There is no necessity for me——

The Court: There is no objection to the memorandum being considered an offer, is there?

Mr. Mitchell: I think that is proper and it will save time.

The Court: It will save time, and it is all down here.

Mr. Corinblit: Yes, sir.

The Court: Mr. Corinblit, I don't believe the Paramount case has any place in this suit at all. If you had been [2325] trying this case without a jury, I would probably have let it in because I could have brought it in and disregarded it entirely if I didn't think it applied, but inasmuch as we have a jury here, I think we are only complicating the matter by giving this phase of the case to the jury.

I feel if you would be allowed to present to the jury and argue to the jury that there had been a conspiracy in Los Angeles, that they might feel that that conspiracy would continue until there is some evidence to the contrary, and I don't know whether that is the rule or not. I think this case depends upon the facts particularly at this particular time in the Inglewood-Westchester area.

In my opinion, you have presented the facts to the jury and they are the ones to determine whether or not in their opinion there has been a conspiracy.

So I think I would be harming your case if I would allow the Paramount case to come in, because I am satisfied if I allowed the Paramount case to come in and you got a judgment, there would be an appeal—there might be an appeal anyway, as far as that goes, but they may have good reason for an appeal if I allow the Paramount case to go in. By keeping it out I avoid that problem entirely, so I am going to reject your offer of proof.

Mr. Corinblit: Now, there are one or two other matters, your Honor. It may be that I would request that I be [2326] able to finally take care of



certain matters on Tuesday. I expect to call no other witnesses. I have concluded the witnesses. The only other thing is——

The Court: You have got one witness somewhere in Europe, if you can locate him.

Mr. Corinblit: Other than Mr. Spyros Skouras. I have not had an opportunity to go through my list of exhibits to assure myself—— [2327]

The Court: I am not going to require you to rest this afternoon.

Mr. Corinblit: Thank you, sir.

The Court: You can start Tuesday morning, but not over. You can't start over. You can't bring up anything new, but if you have some loose ends that you want to tie up we will try to accommodate you.

Mr. Corinblit: Thank you, sir.

Mr. Mitchell: Your Honor, at the time he rests, except for the testimony of Mr. Skouras, I want to take a certain position. I can state it now. I don't want to state it in the presence of the jury.

I understand your Honor is going to allow counsel not to rest his case, but to hold back until Mr. Skouras shows up. Isn't that correct?

The Court: What else can I do?

Mr. Mitchell: I don't know.

The Court: Mr. Skouras was subpoenaed. He should be here.

Mr. Mitchell: I don't know. I am not criticizing anybody.

The Court: If he hadn't been subpoenaed, I probably wouldn't do it.

Mr. Mitchell: Don't take it that I am complaining. I am just stating a fact. That is the fact. [2328]

Now, under those circumstances, I take it that you want us to go ahead?

The Court: Yes, I do want you to go ahead.

Mr. Mitchell: And if we go ahead, I want to do so without prejudice to our right to make such motions when plaintiff finally does rest his case, as we might otherwise have made at the end of his resting before we are required to go forward.

The Court: You may proceed without any prejudice. I won't hold it against you because you go ahead.

Mr. Mitchell: Is that agreeable to you, Mr. Corinblit?

Mr. Corinblit: Let me say this, your Honor. I don't know my legal position on this particular point. I don't think we should be in a position, if your Honor makes the ruling, of course, we will abide by that ruling, but I will say this. If you feel I ought to stipulate——

The Court: Mr. Corinblit, you subpoenaed Mr. Skouras. He is not here. Now, I don't know what I can do.

I could require you to finish your case regardless of whether Mr. Skouras is here or not. And then possibly I might hold Mr. Skouras in contempt or you might proceed on some civil action against him. I don't know.

Mr. Corinblit: All right, your Honor.

The Court: But under the circumstances, I think

it is only just and right that if they go ahead, that they should not waive any rights they have because of this predicament [2329] over which you had no control, and they have a justifiable excuse for.

Mr. Corinblit: All right.

The Court: I think they have a justifiable excuse.

Mr. Corinblit: I agree, and I think that is a fair explanation and we will agree that we proceed without prejudice to the right of counsel to file whatever motions he desires to file at the conclusion of our case.

Mr. Mitchell: We have been using this large map of the Los Angeles metropolitan area and it is a map that we produced.

It has never been introduced into evidence. The map itself has never been introduced into evidence. I assume the map is accurate except as we called attention to the fact that the theatre named Fox Crest is really called the Fox. But there is an index of theatres on there for which no foundation has been laid and which I am advised is incorrect. But I think the map should be admitted in evidence and perhaps marked as one of our exhibits, so we can get it back some day when and if this case ever ends.

Mr. Corinblit: On that point, your Honor, I haven't looked at the index.

Mr. Mitchell: I said I don't believe the index is correct.

Mr. Corinblit: I don't know the extent to which it is not [2330] correct.

We have marked in this case another list of Fox theatres as of this date. If there is a problem as to the identification of Fox theatres, I would certainly be willing to eliminate the index if we get in this other list of Fox theatres. What I am thinking about is this, your Honor. I don't know whether it will become important but on appeal, and I am sure that is what Mr. Mitchell has in mind, on an appeal by either side we would have this map before the Court of Appeals and Mr. Mitchell would undoubtedly be up there pointing to all of these theatres and indicating to the court all the problems the distributors had with all of these theatres. That would be his argument, without regard to the question of conspiracy and collusion.

The Court: There has been no list introduced so far in evidence and there has been no testimony as to a list.

I think the list of theatres on that exhibit should be crossed out or X'ed out or the other list that is mentioned should come in. I think you gentlemen can agree as to the list of theatres.

Mr. Mitchell: I think so.

Will that have a number?

The Clerk: What is it?

Mr. Johnston: You asked me, Mr. Corinblit, the other day—— [2331]

Mr. Mitchell: I am not finished yet. It is Joint

Defendants' exhibit next in order or in evidence, your Honor.

The Court: In evidence.

The Clerk: Is that a map?

Mr. Mitchell: That is a good guess.

Mr. Westbrook: Theatre map of Los Angeles, California.

Mr. Bakaly: 1949.

The Court: Now, Mr. Johnston.

Mr. Johnston: Mr. Corinblit asked me some time ago, and I think the court ordered me to furnish him the number of theatres in the Los Angeles metropolitan area operated by Fox West Coast. Now, I have those figures which I am prepared to tender to Mr. Corinblit for a stipulation.

I have 105 Fox West Coast theatres in Los Angeles County as of July 1950.

Mr. Corinblit: I would like the opportunity of checking those figures.

Mr. Johnston: Certainly.

The Court: You can check them over between now and Tuesday morning.

Mr. Corinblit: I can't put my finger on the exhibit, but did your Honor state that the list of theatres that was otherwise offered you would permit in evidence, since we are striking out—

The Court: I didn't say I would permit it to go in. I [2332] said I thought you could stipulate they could go in. I didn't think there would be any dispute about that.

Mr. Corinblit: All right.

The Court: And if you get the list, you can paste it over that list there.

Mr. Corinblit: That is agreeable. [2333]

\* \* \* \* \*

Mr. Corinblit: Thank you. Let the record show I have served upon counsel for the defendants the supplemental memoranda re the admissibility of inter-office communications.

Your Honor, we just have a few documentary matters to offer in evidence. The plaintiff will offer in evidence the cut-off cards of Paramount, cut-off cards for 1948-49, joint plaintiff and defendants' Exhibit A-1—should we give them a plaintiff's number? It will be plaintiff's next in order.

The Clerk: That would be 69.

Mr. Corinblit: We are going to provide, as a matter of fact, we have in the court room practically all the photostatic copies, and we will provide a complete photostatic copy. [2337]

Mr. Mitchell: You are including the years 1948-49, '49-50 and '50-51?

Mr. Corinblit: Yes. All the cut-off cards which have been produced are being offered in evidence.

Mr. Mitchell: I have no objection to those that are material to the period September 17, 1950, to September 17, 1951, but Exhibit A-1 applying to the period 1948-49 we object to as being immaterial to the issues.

Mr. Corinblit: Your Honor, this period now has been carved out in terms of other evidence, and this fits together with the other evidence that has gone

in. We have put in bid data starting with a reasonable period just prior to the opening of the theatre, including a reasonable period just prior to our discussions with the distributors. We have had testimony on the stand to that effect. We have now a complete set of records which is just filling in.

Mr. Mitchell is now backing away from rulings which your Honor has consistently made heretofore.

Mr. Mitchell: I am not backing away from anything. I have never said anything except that it should relate to the period when the man operated and could have been damaged.

The Court: Overruled.

The Clerk: 69-A.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 69-A.) [2338]

Mr. Corinblit: The Paramount cut-off cards for 1949-50 as 69-B.

The Court: In evidence.

The Clerk: 69-B.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 69-B.)

Mr. Corinblit: Paramount cut-off cards for the 1950-51 season as the Plaintiff's Exhibit 69-C.

The Court: In evidence.

The Clerk: 69-C.

(The exhibit referred to was received in evi-

dence and marked as Plaintiff's Exhibit No. 69-C.)

Mr. Corinblit: Twentieth Century-Fox cut-off cards for the year 1950, Exhibit 70-A.

The Court: In evidence.

Mr. Johnston: May I see them just a minute, counsel, please?

Mr. Corinblit: Yes. (Handing documents to Mr. Johnston.)

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 70-A.)

Mr. Corinblit: Twentieth Century-Fox cut-off cards for the year 1951, 70-B.

The Court: In evidence.

The Clerk: Exhibits 70-A and 70-B. [2339]

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 70-B.)

Mr. Corinblit: Universal cut-off cards for the year 1948-49, 71-A; Universal cut-off cards for the year 1949-50, 71-B; and Universal cut-off cards for the year 1950-51 as 71-C, your Honor.

Mr. Mitchell: May I see those, your Honor please?

Mr. Corinblit: Yes.

Mr. Mitchell: I object to the 1948-49 cut-off cards of Universal for the same reason I objected to those of Paramount.

The Court: Same ruling. In evidence.

The Clerk: 71-A, B, and C.

(The exhibits referred to were received in evi-



dence and marked as Plaintiff's Exhibits 71-A, 71-B and 71-C.) [2340]

Mr. Corinblit: Warner's cut-off card, '48-'49 season as 72-A.

Mr. Mitchell: We object to it for the same reason.

The Court: Same ruling. In evidence.

The Clerk: 72-A in evidence.

(The document referred to was marked Plaintiff's Exhibit 72-A in evidence.)

Mr. Corinblit: Warner's cut-off card for the '49-'50 season as 72-B and Warner's cut-off card for the '50-51 season as 72-C.

The Court: In evidence.

(The documents referred to were marked Plaintiff's Exhibit 72-B and Plaintiff's Exhibit 72-C in evidence.)

Mr. Corinblit: The Metro cut-off card for the season '48-'49.

Mr. Mitchell: To which I object for the same reason.

The Court: Objection overruled.

Mr. Corinblit: As Exhibit 73-A.

The Court: Same objection and same ruling. In evidence.

(The document referred to was marked Plaintiff's Exhibit 73-A in evidence.)

Mr. Corinblit: And Metro cut-off card for the '49-'50-'51 season as Exhibit 73-B.

The Court: In evidence. [2341]

The Clerk: Exhibits 73-A and 73-B in evidence.

(The document referred to was marked Plaintiff's Exhibit 73-B in evidence.)

Mr. Corinblit: Columbia cut-off card for the '48-'49 season as Exhibit 74-A, the Columbia cut-off card for the '49-'50 season as 74-B, and Columbia cut-off card for the '50-'51 season as 74-C.

Mr. Mitchell: Object to all of them on the ground they are outside the issues of this case.

The Court: Objection overruled. In evidence.

The Clerk: 74-A, -B and -C in evidence.

(The documents referred to were marked Plaintiff's Exhibits 74-A, 74-B and 74-C in evidence.)

Mr. Corinblit: We offer in evidence as Exhibit 75-A, RKO cut-off card for the '48-'49 season; as 75-B, RKO cut-off card for the '49-'50 season, and 75-C, RKO cut-off card for the '50-'51 season.

Mr. Mitchell: Same objection.

The Court: Same ruling. In evidence.

The Clerk: 75-A, -B and -C in evidence.

(The documents referred to were marked Plaintiff's Exhibits 75-A, 75-B and 75-C in evidence.)

Mr. Corinblit: We offer in evidence United Artists cut-off card for the '48-'49 season as 76-A.

The United Artists cut-off card for the '49-'50 season as [2342] 76-B, and United cut-off card for the '50-'51 season as 76-C.

The Court: Same objection, same ruling. In evidence.

Mr. Mitchell: Thank you.

The Clerk: 76-A, -B and -C in evidence.

(The documents referred to were marked Plaintiff's Exhibits 76-A, 76-B and 76-C in evidence.)

Mr. Corinblit: There is a group of separate cut-off cards which we would like to offer as 77-A, a group of two cut-off cards from the Southside and Imperial Theatres for the '50 and '51 season.

The Court: In evidence.

The Clerk: 77-A in evidence.

(The documents referred to were marked Plaintiff's Exhibit 77-A in evidence.)

Mr. Mitchell: That should be subject to the same objection, your Honor. I assumed they were involved in this action.

The Court: What year did you say?

Mr. Corinblit: '50-'51.

Mr. Mitchell: The year is pertinent, but Columbia is not a defendant in this action.

The Court: Same objection, same ruling. In evidence.

Mr. Corinblit: Columbia cut-off card for the Southside Theatre for the year '49-'50 as 77-B.

Mr. Mitchell: Same objection.

The Court: Same ruling. In evidence.

The Clerk: Exhibit 77-B in evidence.

(The document referred to was marked Plaintiff's Exhibit 77-B in evidence.)

Mr. Corinblit: The Metro cut-off card for the La Tijera, Fox, U.A., Academy, Fifth Avenue, '49, '50 and '51 season as 77-C.

The Court: In evidence. Same objection?

(The document referred to was marked Plaintiff's Exhibit 77-C in evidence.)

Mr. Mitchell: Metro is a party to this action, and the period that is involved is within that stated in the complaint. There is no objection.

The Court: In evidence.

Mr. Corinblit: 77-D is a Warner Bros. cut-off card for the '50-'51 season for the Southside Theatre.

Mr. Mitchell: No objection.

The Court: In evidence.

The Clerk: 77-D in evidence.

(The document referred to was marked Plaintiff's Exhibit 77-D in evidence.) [2344]

Mr. Corinblit: 77-E, the Paramount cut-off card, the A-10 series, I believe, 1950-'51.

Mr. Mitchell: No objection.

The Court: In evidence.

The Clerk: Exhibit 77-E.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit No. 77-E.)

Mr. Corinblit: 77-F, the Paramount cut-off card, the A-9 series, 1949-50 season, for the Southside Theatre as 77-F.

The Court: In evidence.

The Clerk: Exhibit 77-F.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 77-F.)

Mr. Corinblit: The plaintiff will next offer in evidence the Fox West Coast bid letters for the

first quarter of 1949 as Plaintiff's Exhibit next, 78-A.

Mr. Johnston: To which I will object, your Honor, on the ground they are immaterial, being outside the time issue involved in the lawsuit.

The Court: Overruled. In evidence.

The Clerk: Exhibit 78-A.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 78-A.)

Mr. Corinblit: As Exhibit 78-B the Fox West Coast [2345] bid responses for the second quarter of 1949.

Mr. Johnston: Same objection.

The Court: Same objection, same ruling. In evidence.

The Clerk: Exhibit 78-B.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 78-B.)

Mr. Corinblit: 78-C, Fox West Coast bid responses for the third quarter of 1949.

The Court: Same objection, same ruling. In evidence.

The Clerk: Exhibit 78-C.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 78-C.)

Mr. Corinblit: As Exhibit 78-D, the Fox West Coast bid responses for the fourth quarter of 1949.

The Court: Same objection and same ruling. In evidence.

The Clerk: Exhibit 78-D.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 78-D.)

Mr. Corinblit: Exhibit 78-E, Fox West Coast bid responses for the first quarter of 1950.

The Court: Same objection and same ruling. In evidence. [2346]

The Clerk: Exhibit 78-E.

(The exhibit referred to was received in evidence and marked as Plaintiff's Exhibit 78-E.)

Mr. Johnston: Mr. Corinblit, it is stipulated, I take it, that as to the other bid responses, for Fox West Coast, photostats of these documents will be substituted?

Mr. Corinblit: Yes, sir. Your Honor, there is a matter we ought to have clarified. Early in the trial, I believe we offered Exhibit 31-E, which is a list of Fox West Coast theatres as of August 1, 1950, that is a list of theatres in the chain. Your Honor rejected the offer on the ground that the parties stipulate. There is a dispute between us as to what your Honor was requiring us to stipulate to. If you will look at page 181 of the transcript, which is volume 3—

The Court: The only question was the number of theatres. The names of the theatres didn't particularly mean anything.

Mr. Corinblit: Yes, sir.

The Court: Can't you stipulate as to the number of theatres?

Mr. Johnston: I thought we had, your Honor. I was under the impression that the court's ruling was that it would be required to furnish the number of theatres operated by Fox West Coast in the Los Angeles metropolitan area, which is the [2347]

figure I gave to the court and to Mr. Corinblit Friday.

The Court: Can you stipulate as to that number?

Mr. Corinblit: I will certainly be glad to look into that matter.

Mr. Johnston: What was the number? I left my Friday's transcript in my office. 106, I think, wasn't it?

Mr. Corinblit: Something like that. What I was after was this, your Honor. In your ruling on this question, if I can read, as I read the transcript, Exhibit 31-E had to do with the total theatres in the Fox West Coast chain, and your Honor said, as I read your Honor's statement, you required a stipulation of the total number and the total number in the metropolitan area. Mr. Johnston understands your language to require only a stipulation as to the total number in the metropolitan area.

The Court: What difference does it make, Mr. Corinblit, whether there were 100 theatres or 1,000 theatres? It is a big chain.

Mr. Corinblit: Yes.

The Court: No question about it being a big chain.

Mr. Corinblit: I agree with that, but a big chain is a broad word, and it seemed to me we ought to have the total number.

The Court: I will restrict the stipulation to the number of theatres in the Los Angeles metropolitan area. [2348]

Mr. Corinblit: All right, your Honor.

Mr. Johnston: That figure has been given to the court and counsel last Friday.

The Court: For the record, how many theatres were there?

Mr. Johnston: Do you have Friday's transcript?

Mr. Corinblit: I don't have it here.

Mr. Johnston: May I borrow the court's copy?

The Court: Yes. What page was it?

Mr. Johnston: I think I can find it. If you have other things to offer, I will be looking for this.

Mr. Corinblit: I think this is just about all.

Mr. Johnston: I have it here. 105 Fox West Coast theatres in Los Angeles County, July, 1950.

Mr. Corinblit: In Los Angeles County?

Mr. Johnston: In Los Angeles County.

Mr. Corinblit: We will accept that stipulation subject to correction on that point.

There are two outstanding matters, your Honor. One is the names of theatres to the extent we can stipulate to them to be substituted for the directory. I think that is something we can stipulate to.

The Court: My understanding was that you would prepare a new list and paste it over this map.

Mr. Corinblit: Yes. [2349]

Mr. Johnston: Are the names of the theatres material, your Honor, in this proceeding? What difference does it make what they are called?

The Court: I think that the stipulation was that you present a new list of names to be pasted over the list of names on the map. You said the list of names on the map was not a correct list. I



don't know what materiality it has or whether it is material, but that was our stipulation. That was our agreement.

Mr. Corinblit: We will prepare that and submit it, your Honor.

Mr. Johnston: All right.

Mr. Corinblit: Subject to that stipulation and subject only to the testimony of Mr. Spyros Skouras, the plaintiff rests its case.

Mr. Mitchell: Your Honor, we are now proceeding on the basis of the stipulation we made on Friday just before adjournment?

The Court: That's right. Subsequent to Mr. Skouras' testimony, you can make any motion you wish to make and you will not be jeopardized because you proceed now.

Call your first witness.

Mr. Westbrook: The defendants will call Mr. Dunn.

Mr. Corinblit: Your Honor, it might be you would want to explain to the jury now that the defendants are calling [2350] witnesses and the plaintiff is cross examining.

Mr. Mitchell: They will find that out.

The Court: This is a defendants' witness. All right. Swear the witness.

CECIL L. DUNN

called as a witness herein by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Take the stand, please, and state your name.

The Witness: Cecil, C-e-c-i-l, L. Dunn, D-u-n-n.

Direct Examination

Q. (By Mr. Westbrook): Mr. Dunn, I am not sure the jury got your name. I wonder if you would repeat it so that they might hear it.

A. It is Dunn, D-u-n-n, short, but frequently misunderstood.

Q. Will you state your occupation, please?

A. I am an economic analyst. That probably calls for a little explanation, I suppose.

I imagine everyone has heard of the business of being an economist. Economists are very much in the news in recent years. An economic analyst is one of the specialties in the general business of being an economist. An economic [2351] analyst is a man who devotes his time particularly to the practical data of business operations in contrast with what you might call a theoretic economist who spends his time more or less in speculation about how the economy works.

An economic analyst generally works for business firms and units of government to develop information that can be directly applied to the solution of business problems. That is what I do. [2352]

Q. State your educational background briefly.

(Testimony of Cecil L. Dunn.)

A. I was a graduate from the University of Southern California with a Bachelor of Art degree and I have a Master's degree and Doctor of Philosophy from the Claremont Graduate School out here in Claremont.

Q. Now, commencing, say, about 1940, would you outline briefly your employment history?

A. Well, during the depression, like everybody else, I did everything that there was to do. I taught school and all the things that people did during the depression to keep occupied.

In 1940 I returned to school at Claremont where I was employed as an instructor in economics and sociology by Pomona College and where I completed my work for the Ph.D. in the Claremont Graduate School.

After I got my doctorate in 1942, I came back to Los Angeles and went to work as an instructor in economics for Occidental College out here in Eagle Rock.

I stayed at Occidental for eight years and was promoted variously during the time I was there.

After I had been there three years, I was a full professor of economics which shows you how short they were of economists at that time. And for the last five years that I was there, I was professor of economics and chairman of the department of economics. [2353]

I discovered very early in the game of being a college teacher that it was almost impossible to support a wife and three children and a large first

(Testimony of Cecil L. Dunn.)

mortgage on what colleges were able to pay. So, fortunately, here in Los Angeles there was a great deal of employment for someone who was prepared to do the kind of work which I have described as an economic analyst.

So, very shortly after I came to Occidental I began to do a good bit of this sort of thing on the side. As a matter of fact, there was so much work of that kind available that, first, in partnership with another man, also a professor of economics, and then later as a small business which we called Cecil L. Dunn Company, Incorporated, we went into business of economic analysis on quite a scale.

It was very interesting and reasonably successful. I worked for a large number of business firms in Southern California, and for some of the principal units of Government, including the State of California.

I continued both to teach school and to conduct my own business until 1950 when I resigned from Occidental College and shortly thereafter I gave up my own business and went to work for a national firm of managing consultants called Booz, Allen and Hamilton—"Booz" is spelled without the letter "e" on it.

It is a firm which has headquarters in Chicago and I was [2354] on their staff here in Los Angeles.

For them I traveled all over the United States.

Early in my practice we, shortly after I had come to Occidental, I was employed by the Southern California Gas Company and Southern Counties Gas

(Testimony of Cecil L. Dunn.)

Company of California, which are gas distribution utilities here in Los Angeles.

In 1952 I resigned from the staff of Booz, Allen and Hamilton and went to work full time for Southern Counties Gas Company where I still am.

I am manager of the rate department. I think up the prices which we try to charge people for gas.

I am responsible for all of their relationships with the Public Utility Commission of California, which regulates our intrastate business, and for our relationships with the Federal Power Commission which regulates the prices at which we purchase gas from Texas and elsewhere. And generally act as an economic advisor to the company.

I said I went to work for them full time and I suppose that statement may be a slightly contradictory statement because I have continued to serve in a consulting capacity to some of my older clients for whom I have worked as an economic analyst, and even occasionally to do a certain amount of new work.

Part of my work as an economic analyst consisted of acting as director of research for an organization known as [2355] The Residential Research Committee of Southern California. That is an organization of banks and saving and loan associations and life insurance companies and real estate firms and building firms and others who are interested in the residential real estate and building market.

For that organization for a period of several

(Testimony of Cecil L. Dunn.)

years I prepared a regular quarterly summary of what was going on in the building and real estate market—how many houses were being built, how many were being completed. What the trend of prices was, and all of the rest of the information which would be useful for people in that industry.

At the end of 1954 I stopped doing that because I had, through that business, had learned something about the industry myself and with some of my associates I organized a small life insurance company which sells mortgage protection insurance to borrowers from savings and loan associations.

It is called Mortgage Life Insurance Company. I am the president.

The firm is only about a year and a half old, but we have mortgage protection insurance in force on about \$20,000,000 of mortgage loans outstanding in Southern California and for that matter all over the United States.

Q. Mr. Dunn, in connection with the residential research committee and also the Mortgage Life Insurance Company, was it important in the course of your duties for both of those [2356] organizations to keep in touch with the patterns of population distribution and growth of business centers and so on in Los Angeles?

A. Yes. That was one of my principal specialties, finding out what parts of the region were growing and what parts were prospectively going to grow and so on. As a matter of fact, I have the same responsibility with the gas company because

(Testimony of Cecil L. Dunn.)

we, too, have to keep up with the just unbelievable rapid growth of this area and make sure that adequate facilities are planned in advance for the new subdivisions and new tracts which are being opened all the time.

Q. Will you give the jury a little more clear idea of just what it is an economic analyst does? Will you mention specifically some of the types of studies you have had occasion to make in the course of your career?

A. Yes. I have done what is known as market analysis in which you try to decide what the characteristics of a given area are as a possible market for any commodity or even for a variety of commodities.

A firm, for example, would be interested in establishing a branch or something of that character, would be interested in a market analysis to supply them with the necessary information.

We develop the number of people in the area, the standard of living, the available income, the type of competition that [2357] exists or potentially would exist—all of the things which might influence a man's decision to start a business in a given location.

Q. You mentioned that you made a number of such market area surveys, is that correct?

A. Yes, I have.

Q. Would you mention the names of clients for whom you have made such surveys?

A. I have made market area surveys for Look

(Testimony of Cecil L. Dunn.)

Magazine, which is a national publication, for the Glendale Federal Savings and Loan Association, for the Drake Steel Supply Company here in Los Angeles.

I have made surveys for the Board of Supervisors of Kern County, for the Board of Supervisors of Orange County.

I have made surveys for the Southern California Businessmen's Association which is an organization of super market and large scale drug store operations, and for a number of similar groups of that kind.

Q. Have you done any such work for savings and loan associations?

A. Yes. I have made three studies of that character for the Glendale Federal Savings and Loan Association.

Q. Now, is there another type of study which you sometimes make which is known as a business location study or survey? [2358]

A. Yes. A business location survey is a little different from a market survey. As a matter of fact, it is almost the reverse.

In a market survey you are summing up the information about a given area so that a business firm can decide whether or not it wants to locate there.

In the case of a business locational survey they have already decided they want to do something and then it is the problem of where in a given area is the best place to locate.



(Testimony of Cecil L. Dunn.)

I have done business locational surveys of that kind also for the Glendale Federal Savings and Loan Association and for the Langendorf Bakeries and for the Dixie Cup Company, both of which I think are firms whose names are quite familiar.

Q. Now, in the case of——

A. May I mention one thing more?

Q. Excuse me.

A. On top of all this, at the present moment I am serving as an economic consultant to the Metropolitan Water District here in Southern California, and to the Attorney-General of California in the famous Colorado River suit which is being tried in the Supreme Court at this present time.

Q. Have you in the course of your work had occasion to make any studies or surveys of motion picture theatre patronage?      A. Yes, I have.

Q. Will you state the approximate number?

A. I have surveyed approximately 12 to 14. I think 14 is a fair figure.

Q. Those studies, Mr. Dunn, I take it, were studies made at the request of defense counsel in various motion picture cases, is that correct?

A. Yes, they were.

Q. Would you mention some of the cases involved?

A. The first of those cases in which I was involved was the case involving the Puente Theatre out here in Puente. I made a survey of that theatre and certain competing theatres for Mr. Eugene Williams of Freston & Files.

(Testimony of Cecil L. Dunn.)

The Court: May I ask, what was the purpose of the [2360] survey. What were you trying to find out?

The Witness: What we were trying to find out there—well, there were two things we were trying to find out. First we were trying to define what might be the natural market area for the Puente Theatre.

The Court: You are talking to the jury now. Don't talk to me.

The Witness: Excuse me. Trying to find out what area the Puente Theatre could normally expect to draw from. We were trying to find out to what extent it was in competition with theatres that were located in communities around it like El Monte, Rivera, Pico, Whittier, Baldwin Park, and so on.

The Court: Do you understand the term substantial competition?

The Witness: Yes, sir.

The Court: Will you give the jury your interpretation of the term substantial competition in the theatre business now?

The Witness: I think it can probably be defined in a variety of ways depending upon the circumstances, but I think that substantial competition is anything which, shall we say, jeopardizes or hampers the profitable operation of a theatre, which bites into the profits which a theatre would earn in the absence of the competitor.

(Testimony of Cecil L. Dunn.)

The Court: One per cent, would that mean substantial [2361] competition?

The Witness: There would be circumstances in which it could be.

The Court: Less than one per cent would not be substantial?

The Witness: I wouldn't want to draw the line, sir, except to say that there are instances in which one per cent profit is the difference between breaking even and not breaking even. It is a sort of axiom, I guess, in business operations, that as long as you break even you will continue to operate rather than shut down, because when you shut down you have given up completely, and all your fixed charges, like payment of mortgage and taxes and things like that continue to run and one loses more money than if you continue to operate.

The Court: Then your premise for substantial competition is profit. If it affects the profit, then it is in substantial competition?

The Witness: That would be one of them, yes.

The Court: You mean if it affects not the income, but the profit?

The Witness: Oh, I think it would be perfectly reasonable to treat a big bite out of income as substantial competition, too, because the income very largely determines in the theatre industry the place that the individual theatre can maintain in the market. A theatre that has a big income [2362] can bid with the greater prospect of success for the pictures which it wants. It can maintain a better

(Testimony of Cecil L. Dunn.)

character of operation, offer greater attractions, to a theatre that can't make bids of that character.

The Court: There is such a thing as a big income and no profit.

The Witness: There certainly is such a thing as big income and no profit. That's right.

The Court: If you have a big income and no profit, you are in the same category, are you not, as low income and low profit?

The Witness: No, I don't think so, because there are a variety of reasons why you might have a big income and no profit.

You might have a big income and no profit because you just didn't know how to operate the theatre.

You might have a big income and no profit because for competitive purposes you were using a very substantial portion of the income to build up the character and reputation of the theatre.

You might have a substantial income and no profit on account of some unfavorable situation taxwise, or something of that character.

So while I said initially that the impact upon the profit is certainly the most evident measure of substantial [2363] competition, I think that it is equally important to emphasize the effect upon income.

The Court: Does distance have anything to do with it?

The Witness: I think distance has a great deal to do with it.

(Testimony of Cecil L. Dunn.)

The Court: In what way?

The Witness: It again depends on the circumstances, upon the nature of the community in which the theatre and the competing theatre may be located. It is perfectly possible that there could be a couple of theatres a few blocks apart and not in substantial competition with each other for a variety of reasons.

They might be playing totally different kinds of bills and deliberately seeking the patronage of one class of theatregoer as against the patronage of another class of theatregoer.

They might be situated, for example, like the Los Angeles and Hollywood downtown metropolitan theatres, most of which offer first run attractions and which draw a very substantial portion of their patronage from all the Southern California market area, and which are in competition in a sense, but in view of the range of the market which they have, there seems in most circumstances to be business for all of them. [2364]

On the other hand, a couple of theatres might be a considerable distance apart and depending upon the lines of traffic flow and the distribution of population in the area and the nature of attractions which they offer and character of the theatre's operation, and things of that kind, they could still be in substantial competition.

The Court: I take it from your testimony that there is no definition that is general. When you talk about substantial competition, you have to talk

(Testimony of Cecil L. Dunn.)

about the specific theatres. In other words, you haven't got any definition that will be substantial competition as applied to all theatres. You have got to look at each theatre or each group of theatres independently and determine whether or not they are in substantial competition, is that correct?

The Witness: I think that is true, yes.

The Court: So it is the individual theatre that is important.

The Witness: I think that's right.

The Court: All right.

Q. (By Mr. Westbrook): Now, you mentioned the Puente case, Mr. Dunn. Was there also a case known as the Markoy case in which you did some theatre surveys?

A. Yes, there was. That involved the Crown Theatre in Pasadena and whether or not the Crown Theatre was in competition with the metropolitan theatres in downtown Los Angeles [2365] and Hollywood. In connection with that case, I made a study of the market area from which the downtown Los Angeles and Paramount Theaters drew their patronage.

We studied in that case most of the principal first run theatres in both downtown Los Angeles and in Hollywood.

Q. Was there also a case known as the Baldwin case or Fanchon & Marco case?

A. Yes, there was.

Q. Did you make certain studies in connection with that case? A. Yes, I did.

(Testimony of Cecil L. Dunn.)

Q. Included among those studies, was there a study of the patronage of a theatre in the Inglewood-Westchester area known as the Academy Theatre? A. Yes, there was.

Q. At what time did you make that study?

A. The study of the patronage of the Academy Theatre was made in—toward the end of May, 1951 and the first part of June, 1951.

Q. That was in connection with the Baldwin case?

A. That was in connection with the Baldwin case, and it was at the request of the law firm of O'Melveny & Myers.

The Court: You were trying to find out in that case whether the Baldwin was in substantial competition with the Academy, were you not? [2366]

The Witness: Yes, I was.

The Court: You weren't concerned with any other theatre?

The Witness: Well, the nature of the—well, we were concerned with other theatres because we made other surveys than just those relating to the Baldwin and the Academy at that time.

The Court: As far as the Baldwin case was concerned, you were only interested in the question of whether the Academy was in substantial competition with the Baldwin?

The Witness: The Academy and others, yes, but the thing which develops, of course, when you get to looking at the market area served by the theatres in the Los Angeles metropolitan area, is that

(Testimony of Cecil L. Dunn.)

there is a sort of continuous series of overlaps, so while you have to pin down the question of substantial competition, I suppose, to whether Theatre A is in competition with Theatre B, the solution or the answer to that question depends very largely on how they are located with respect to each other, and all these other factors which I mentioned, and again how the rest of the potentially competing theatres are located.

Q. (By Mr. Westbrook): Now, Mr. Dunn, we will come back to that 1951 survey in just a moment.

A. Yes.

Mr. Corinblit: 1951? [2367]

Mr. Westbrook: 1951, counsel.

The Witness: Yes, 1951. [2368]

Q. During the intervening years from 1951 to 1956 did you have or were you employed by any motion picture company or, as far as you know, any firm of attorneys representing any motion picture companies? A. No.

Q. Now, in 1956 were you again employed by the firm of O'Melveny & Myers?

A. Yes, I was.

Q. And that was in connection with this case?

A. Yes, it was.

Q. Now, in addition to the particular patronage survey that you made of the Academy Theatre in 1951, what additional sources of information did you use in making your further study of the situation pertaining to the Inglewood-Westchester area in 1950 and 1951, but as of 1956?



(Testimony of Cecil L. Dunn.)

A. Well, in connection with our study made for this case in the Inglewood-Westchester situation, we used a lot of information—United States Census data, specific observational studies made right on the ground—one that was made off the ground, an aerial photograph, as a matter of fact. A lot of theatre operating information relating to the playing dates and film rentals and the gross admissions and the various attractions that were played in the various theatres in the area during the time.

Most of that information, of course, derived from such [2369] theatre records such as cutoff cards and so on.

I examined newspaper advertising, both local and metropolitan newspapers and developed other information which would help to define the general competitive situation in the area.

Q. Did you take into consideration in the course of your study the survey of the residents of the Westchester area conducted by the Paradise Theatre Building Corporation in 1950?

A. Yes, sir.

Q. Have you mentioned the principal sources of information on which you relied in your study?

A. Yes, I think I have.

The Court: May I inquire, was the Paradise Theatre Building Corporation survey made available to this witness? He said he took it into consideration. Was that made available in this lawsuit for him?

Mr. Westbrook: To answer the question, your

(Testimony of Cecil L. Dunn.)

Honor, the records were made available to defense counsel after we had taken Mr. Schreiber's deposition and were made available to this witness.

The Court: Then he considered that along with the other matters.

Mr. Westbrook: That is correct.

Q. Now turning to the question of market areas in [2370] metropolitan Los Angeles.

Would you state for us, Mr. Dunn, the principal characteristics of the metropolitan area from the standpoint of markets and merchandising?

A. Well, the Los Angeles area, of course, is an extremely interesting one. It is, I guess everyone knows, unique among metropolitan areas in the way in which it has grown and spread out all over everywhere. It has, of course, the historical downtown Los Angeles which was the first important and still remains the single most important business district in the whole region.

Around that metropolitan center, the Los Angeles downtown area——

Q. I will point to these areas while you are talking about them.

A. Thank you. We have had the development of a lot of subsidiary but in many instances extremely important marketing areas from the standpoint of the entertainment industry. Of course, Hollywood is the next most important area; perhaps from the standpoint of retail trade and also significant in the entertainment industry is the Wilshire Boulevard market center, and then all around the city we have

(Testimony of Cecil L. Dunn.)

what we call the principal suburban or regional centers like——

Q. Before we go into the suburban areas, Mr. Dunn, is [2371] there a commonly accepted definition or description of the area in which you find Hollywood and Wilshire Boulevard and the downtown area located?

A. Yes, what you might call the core of the metropolitan area. The central portion of the City of Los Angeles, the Los Angeles market area as such consists of the area, oh, say from the eastern city limits of Los Angeles, taking in the downtown area, up through Highland Park, Eagle Rock, over through Hollywood and down to the eastern city limits of Beverly Hills, down to the south, oh, about as far as the northern limits of the Baldwin Hills, and back over roughly to Jefferson Boulevard. That is the most densely populated portion of the city.

Historically this is one of the oldest portions of the city. It has a sort of natural cohesiveness which makes it a pretty well defined marketing area in itself.

Q. Now, you started to mention suburban or regional centers.

A. Then there are these regional centers with which I think most of us are familiar, like Pasadena, Glendale, Beverly Hills, Inglewood, the Huntington Park area, on the southeast, and then probably Whittier and the equivalent areas to the east.

They sort of ring the city and these are important business centers, but, of course, of a somewhat

(Testimony of Cecil L. Dunn.)

different [2372] character than the downtown Hollywood area.

Q. Would you distinguish the characteristics of the suburban centers that you have spoken of from the business centers in the urban part of Los Angeles?

A. Yes. There is a sort of commonly accepted terminology that has grown up in market research and city planning conversations to describe things of this kind. We would talk about the "core of the metropolitan areas," a metropolitan center. That is a real big market. That serves immediately a half million people or more, and, of course, the principal business center for the two or three million people who now live in this whole Los Angeles business area.

In a metropolitan center like that you can find everything. It is the center of financial operations. It is the center of government. It is the center of big business, office centers—things of that kind.

Distributors of practically every kind of product are located or at least have their offices there. There is nothing in the whole range of goods and services available to us that you cannot get in a market area like that.

It, of course, has a very large development of retail trade as well in the characteristic retail store in an area like that, that tends to be a pretty broad operation, and which again undertakes to make available just about everything which the consumer would normally want. [2373]

(Testimony of Cecil L. Dunn.)

When you move out from a metropolitan center like that and get into a regional center, which is an area which has grown up or has been built to serve, oh, say, 150,000 to a quarter of a million persons, you get again practically every kind of business operation, but here you get the kind of thing which tends to be focused more directly upon the day-to-day requirements of the consumer.

You don't have the big governmental, the big financial centers and what not, but you have stores with a very comprehensive list of goods available.

You also have some wholesale distributorships which are aimed at serving the area immediately around them and so on. It is just one step down, you might say, from the sort of thing you might find in the metropolitan centers. It is a step in the direction of specific service to the consumer, the household away from the — it is a service to the household and not to industry on a large scale.

We tend to characterize a metropolitan center as such.

Q. Now, is there still a further classification or breakdown?      A. Yes.

Q. Of communities within this metropolitan area?

A. Yes. Then the next step in the direction of decentralization is away from the regional center into what is frequently called the community type of center. [2374]

The regional center, as I mentioned, aims at serv-

(Testimony of Cecil L. Dunn.)

ing and does serve 150,000 to a quarter of a million people.

The community centers serve a market area of fifty to sixty thousand people.

Here again there is a further step in the direction of focusing on the needs of consumers as such.

You have department stores, but usually on a smaller scale. You have all the typical services of a retail character.

You don't have wholesale operations. You have banks and financial offices, but they are branch banks and they are aimed at helping people finance the purchase of cars and houses and are not aimed at handling large-scale transactions for big firms or for government. [2375]

It is a pretty comprehensive type of business center generally. The ordinary every day-to-day requirement of the consumer can be pretty well met there.

Again, it is a further step away from the kind of large scale operation which you have in the metropolitan center or even in a regional center.

Q. Would you name some of the representative community centers which you have been describing?

A. Yes. There are a great many of them. For example, communities like South Pasadena and Alhambra on the east.

Van Nuys and North Hollywood in the San Fernando Valley.

The beach towns characteristically, like Santa Monica, Hermosa, Redondo.

(Testimony of Cecil L. Dunn.)

In the Inglewood area, places like Westchester, for example, Hawthorne on the south side of the city, Torrance and Gardena, Compton.

There are around the regional center of Huntington Park several community centers like Lynwood, South Gate, Bell, Maywood.

We could go on. The pattern is quite distinct, and I think perhaps in Los Angeles it is just about as distinct as it is any place in the United States.

Mr. Westbrook: I think, your Honor, we are at a convenient breaking point, if you care to take the morning recess. [2376]

The Court: Ladies and gentlemen of the jury, we are about to take another recess.

Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition, we will now recess until 10 minutes after 11:00.

(Recess.)

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Westbrook: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Westbrook): Mr. Dunn, I take it that the description that you have given us of the broad outline of the Los Angeles metropolitan area

(Testimony of Cecil L. Dunn.)

is applicable to the 1950-51 period with which we are concerned in this case?      A. Yes, it is.

Q. Now, would you take that description that you have developed and apply it to the problem of marketing in the Los Angeles metropolitan area?

A. In the course of this description I was trying to develop the general idea that as you move from the metropolitan [2377] center outward, you moved away from a concentration of markets that covered the entire region and which served the business and the people of the entire region with practically everything they could require, in the direction of first the regional and then the community centers. You are moving closer and closer toward the requirements of the ordinary consumer.

It is a sort of movement in the direction of convenience of the consumer as much as anything else, and your typical suburban or community market is one which exists very largely because it serves the immediate convenience of the people who live right around it. They are able to get to it with a minimum of time. They are easily able to see what is offered in its shops, and so on.

Generally speaking, they are quite familiar with not only the character of the businesses, but the people who operate them, and so on. It is a community operation in the strictest sense of the word.

Now, of course, you pay something for that. I think it is probably a general rule that as you move outward from the metropolitan center, the prices of uniform goods tend to move up a little bit. It costs



(Testimony of Cecil L. Dunn.)

you a little more to buy locally because you save the expense of going someplace else to buy it. The merchant has gone to the expense of bringing it to you and you pay for the convenience which is involved.

The sort of goods which are sold, I think, are characterized, not only by the fact that they are day-to-day or ordinary household necessities, but they are the sort of thing which isn't logically sold in what you might call a concentrated or an exclusive market. When you are dealing with goods which few people require or few people are willing to pay for, you have to have a great big market serving, in our case, millions of people, in order to support an establishment of that character.

Q. Would you apply those observations to the problem of marketing motion pictures?

A. Well, I think the problem of marketing motion pictures follows this pattern quite distinctly, and I think relates with some point to what I have just said about what you might call the exclusive type of store or theatre.

Characteristically, in the Los Angeles metropolitan area, we have first run, exclusive showings in the Los Angeles downtown or Hollywood areas. Then we get a progressive distribution of pictures in point of time, first with shorter availabilities in the larger suburban centers, and then successively later availabilities in the community theatres as such.

That makes sense from a variety of ways. It relates logically to this pattern of overall market or-

(Testimony of Cecil L. Dunn.)

ganization in the region, and with respect to any picture which is of a [2379] character that it can command the interest of the public on an exclusive showing basis, it makes a lot more money for the distributor to do it that way.

Mr. Corinblit: Your Honor, I ask that that portion of the answer be stricken out. I don't know whether Mr. Dunn knows how much money a distributor makes, unless we have a foundation on this point.

The Court: I might call the jury's attention to the fact that we have in litigation what is known as the expert witness. This is an expert witness. He is an expert in his field. He is qualified to give his opinion. His opinion is worth nothing more than the reasons for his opinion. You don't have to accept his opinion at all. You can listen to him for two or three days and reject his entire testimony if you want to. You may not believe him. But, however, you can accept his testimony or any part of it. It is purely his opinion. It is his opinion that this is good for the distributors. Maybe it is. I don't know.

After you get through, you will have an opinion. I don't know whether you will be able to qualify as an expert in litigation, but at least in your own mind you will have an opinion whether it is good or bad.

The objection is overruled.

Mr. Westbrook: Your Honor, I might say in the course of Mr. Dunn's testimony we will bring out

(Testimony of Cecil L. Dunn.)

amply the [2380] facts on which he bases his opinion.

Q. Mr. Dunn, there has been mentioned in this case the fact that certain of the distributors have engaged since 1950 and 1951 to some considerable extent in the practice of having multiple first run. That would be seven, 10, perhaps even more, scattered around the metropolitan area. How does that fit in with the analysis which you have made?

The Court: May I ask this witness a question?

Mr. Westbrook: Yes, sir.

The Court: Do you understand the term first run applied to motion pictures?

The Witness: Yes, sir.

The Court: And second run?

The Witness: I think I do, yes.

The Court: 7 day availability?

The Witness: Yes, sir.

The Court: 14 day availability?

The Witness: Right.

The Court: All right.

The Witness: The nature of distribution which a distributor would use for a picture depends very largely on the character of the picture which he is going to run and the type of merchandising which he has decided on for that picture.

On a picture in which a considerable degree of public interest can be commanded on an initial single run which [2381] people could be persuaded to come from all the metropolitan area to attend an exclusive first run showing, he would in all proba-

(Testimony of Cecil L. Dunn.)

bility—he certainly would make more money by doing it that way and then stepping down through successive runs, than would otherwise be the case.

On the other hand, he might choose, for any of a number of reasons, to use the multiple first run type of distribution and to build up the total patronage by placing the picture immediately in the—making it immediately acceptable to a larger number of people.

Which practice he would follow would have to depend upon the type of distribution which was available to him, the theatres into which he could get his product, or the theatres that could be persuaded to bid for his product and, as I mentioned initially, just the character of the picture that was being exhibited.

Q. (By Mr. Westbrook): Are you able to illustrate for the jury in any way, Mr. Dunn, the difference between the exclusive first run with succeeding runs going on down the line in these various areas and the multiple first run so far as what you would consider to be the theory of the thing is concerned?

A. Yes, I think I can. May I draw pictures?

Q. Certainly.

A. If someone has a piece of chalk. [2382]

(Witness leaving stand and going to blackboard.)

Now, I hope you will excuse some of my school teaching habits, but chalk is very useful to me. Suppose we have a thousand people represented by a

(Testimony of Cecil L. Dunn.)

line about this long, 1,000 people, who are willing to pay \$2.00 to see a picture on first run.

Now, obviously, with a market as big as Los Angeles, there is going to be a lot more than a thousand, but that is the maximum round number we are using. So 1,000 people are willing to pay \$2.00. We can multiply the 1,000 people by \$2.00 and we get a total of \$2,000 the distributor would get on the first run. The people who paid the \$2.00 are the people who are willing to come downtown to go to a first run theatre.

Beyond them, let us say we have about 4,000 people who won't pay \$2.00, who won't go downtown, who can't go downtown, maybe, but who would go to one of our regional theatres, like Pasadena, Glendale, Beverly Hills and wherenot. So we have 4,000 people there and they are willing to pay \$1.00. That is 4,000 more that he gets on the second run after his first run of \$2,000 is finished.

Well, then suppose we have a lot more people who for a variety of reasons aren't willing to pay \$1.00 to see a picture and aren't willing to go to Pasadena, Beverly Hills and wherenot, but who will go to a community theatre and pay 50 [2383] cents. Let's say we have 10,000 people who would do that and would pay 50 cents. [2384]

Well, on the successive run he would get \$5000 for exhibiting his picture to them.

So, we have \$2000 here which he gets at his exclusive first run.

We have \$4000 for which he gets for his subse-

(Testimony of Cecil L. Dunn.)

quent run in the regional theatres, and we have \$5000 more which he gets on his third run by the time he is in the neighborhood or community theatres, and that obviously adds up to \$11,000.

Now, on the other hand suppose that he decided to shoot for this group all at once, the 50-cent people who only wanted to go to the neighborhood theatre. Well, that cuts off all of this. So, what does he have? He has ten thousand, four thousand and one thousand, or fifteen thousand people all of whom are willing to pay fifty cents.

Fifteen thousand people times fifty cents is \$7,500, which is \$3500 less than if he does it in this successive step type of arrangement.

There is an awful lot of technical jargon which has been used to describe this process, but I am sure you can think of other instances in which it is done.

Department stores do this sort of thing. They sell—can I gave an example?

Q. Certainly.

A. You can buy Arrow shirts, for example, which I have been known to wear, downstairs in the basement on sale at [2385] one price.

You can buy them upstairs where the women do the shopping at another price which is a little higher, and you can buy them on the ground floor where the men who need a shirt in a hurry come in and buy them for a third price. It is the same shirt but the price is still higher because it is this business of capitalizing on the exclusivity, shall we say, which you can get or the business of capitalizing on

(Testimony of Cecil L. Dunn.)

volume. You can work it both ways from the middle. It makes good sense business-wise and almost all kinds of businesses who can do it, do it.

Q. Now, Mr. Dunn, since the end of World War II, there has been a good deal of decentralization of certain types of marketing activities, has there not?

A. There certainly has been.

Q. And I suppose the department stores are the most notable example of that?

A. Yes, they are.

Q. How does that consideration of decentralization—first of all, had that progressed very far in 1950 and 1951?

A. It had gotten started, but it hadn't gone anywhere nearly as far as it has now.

Q. Now, how does that factor of decentralization in such an area as a department store activity affect your opinion with regard to the exclusivity aspects of motion [2386] picture distribution as you just mentioned?

A. Well, this business of progressive decentralization of course is occasioned by a variety of factors. One of the most important of them, among the most important among them in Southern California, of course, is the increasing spread of the community and the increasing difficulty of getting into downtown Los Angeles, particularly, even for that matter the increasing difficulty of getting into some of our important regional centers.

Then there is the fact that as these regional centers grow they are able to support larger and larger

(Testimony of Cecil L. Dunn.)

enterprises and they will ask for a wider and wider group of services. So, from the competitive standpoint it is desirable for the operator of a department store to follow his customers out into the suburbs where they are now for the most part living, and offer them there the maximum amount of service, the maximum range of goods which their requirements makes it profitable for him to carry.

This Southern California area, the Los Angeles metropolitan area, as you know, is—well, it has been called “a community on wheels.” It is an extremely fluid sort of area from the standpoint of movement of the people.

There are more automobiles per capita in Los Angeles County than any other similar unit in the United States and, of course, the world. [2387]

The accessibility of business location is becoming extremely important to merchandisers of goods of every class.

Now, nevertheless, the pattern still remains that there are many reasons why many types of merchandise have to be sought in the big metropolitan center and there are many reasons why it is most advantageous to offer—most advantageous to the seller, that is, to offer his product first in the metropolitan area and then in these successive steps that we have talked about.

Q. Is there any difference between these department store merchandising methods and motion picture merchandising?

A. Yes, there certainly is.



(Testimony of Cecil L. Dunn.)

The motion picture merchandiser is dealing with a product which is by its very nature exclusive. You make a picture. You place behind the picture the reputation of the producer. The reputation of the stars and of the director and other people who go into it and as a result of those things you create an identity which is its own. There is a picture and no other picture is a substitute for it.

The people who want to see so and so and so and so in picture X want to see picture X period.

Now, department stores on the other hand, and other kinds of merchants, are selling goods which are very largely substitutes for each other. Consideration of size and style is taken into account. But one suit of clothes is a pretty [2388] good substitute for another suit of clothes.

The sort of thing you buy at a department store is the sort of thing you buy today, tomorrow, the next day, next year and so on. It is worth that merchant's while to have a supply of those goods available to you or as close to you as he can put them all the time, because he is selling you the sort of thing which you are going to want again and again and again.

I am not trying to imply I buy a suit of clothes every day, far from it. On the other hand, the producers of motion pictures is selling something which by its very nature is exclusive. One picture is not a substitute for another.

The whole economics, I think, of the motion picture industry rests upon this factor of exclusive-

(Testimony of Cecil L. Dunn.)

ness, this factor of uniqueness—the distinctive character of one picture from another. Other merchants don't. Substitution is the rule and therefore it makes more sense for them to decentralize and to serve the aspect of convenience than it does for a merchandiser of motion pictures.

As I was trying to show the diagram, I think, makes sense economically from the standpoint of the maximum return on the investment in the picture to do it like this.

Assuming you have a picture that has—assuming that you have a picture which will command, which is unique, which is distinctive, which does command a public interest, if you [2389] have a picture that nobody ever heard of and nobody will ever hear of again, which is just something to go to and see when you want to get out of the house and not listen to the children any more, why, it is great. That is all right. You could saturate it just like you could saturate, oh, what—bread, or something of that kind.

Q. All right. Now, turning to the Inglewood-Westchester area, have you made an analysis of that area from the standpoint of the market area characteristics?      A. Yes, I have.

The Court: Before you answer that question, let me ask you a question. What is the Inglewood-Westchester area? Let us define the area.

The Witness: Well, I can tell you that, too, I think.

Without getting lost in a lot of technical jargon,

(Testimony of Cecil L. Dunn.)

there is a tendency for suburban communities, even though they are a part of a great big city, to sort of emerge with separate identities. They are the product of a lot of things.

They are the product of history for one thing. They are the product of geography of the region. They are the product of the kind of community interest that has built up around the various institutions, including shops and stores and theatres and whatnot that have come into a particular community.

They are the product of such things—even such things [2390] —even such intangible things as a sort of sense of community loyalty or belonging.

All of those things tend to set apart the suburban areas of a big city as distinctive communities on their own.

Now, in the Inglewood area I think all of those factors are more or less at play. Let us begin with the history of the place. Inglewood, as you know, is probably one of the oldest suburban communities to be built up around Los Angeles.

Clear through the late '20s it existed out there almost by itself. The closest development, built up development in Los Angeles as late as the late '20s was clear over on Crenshaw and West Boulevard in the vicinity of Slauson Avenue.

It was a little community in those days known as Hyde Park. North of there on Crenshaw Boulevard there was a struggling sort of subdivision which in

(Testimony of Cecil L. Dunn.)

those days was called Angelus Mesa. There were a few scattered houses that went up out there on 54th and 52nd Streets, about three or four blocks west of what is now Crenshaw Boulevard. In those days it was called Angelus Mesa Drive and the rest from there out to the beach was farmed—it was a farm by the famous name of Baldwin Ranch.

Inglewood had an early identity of its own. Now, the second factor which I think is important here is geography. Some of it is natural geography and some of it is man-made [2391] geography.

The Baldwin Hills are still there. They still cut off the Inglewood area on the north from the Crenshaw district, particularly to the northeast from Culver City to the north and northwest. The extension of the hills running on out toward Playa Del Rey tends to, and the marsh down around Ballona Creek limits it very definitely in that direction, and on south we have the tremendous man-made obstacle, the huge Los Angeles International Airport which extends all the way from just a block or two back of the ocean front clear over to Redondo Boulevard on the extreme west side of the Inglewood city limits, and moving on in a westerly direction in about that line there is the Hollywood Park Race Track which creates a big unoccupied area. Then there is the Hawthorne Airport. There is the industrial area surrounding the Hawthorne Airport. There is the old El Segundo branch of the Pacific Electric Railroad. Most railroads imposes a pretty important barrier, a sort of a limit upon the com-

(Testimony of Cecil L. Dunn.)

munity because industrial development tends to grow up around it and so on. [2392]

Now, the Inglewood area is sort of a big triangle. It is sort of like a wedge lying on its side. It has its point out in the western limits of Westchester, say between Sepulveda and Lincoln Boulevards.

The center line of the triangle is Manchester Boulevard, which runs east and west through there.

I would say its base was probably some place in the vicinity of about Vermont Avenue.

You have a big triangle there which is about seven miles east and west along Manchester and which probably extends on its base for, oh, four or four and a half miles north and south along in the Vermont Avenue area, and most of that seems to me marketwise logically tributary to the Inglewood center as a regional center.

Now, that is not to say, of course, that there aren't important subcenters, community centers in that area.

Q. What are some of those subcenters, Mr. Dunn?

A. Well, Westchester itself is one. Then there is another one at the intersection of Manchester and Vermont, quite an important one which, unlike Westchester, which was largely a planned market area development, is just a sort of spontaneous thing there which grew up because the people were there.

Further south on Vermont Avenue, in the vicinity of Imperial, there is another one. [2393]

(Testimony of Cecil L. Dunn.)

There is quite an important subcenter at Western and Manchester, and another one somewhat less in importance at Western and Imperial.

Then, of course, along Manchester Boulevard, and to a lesser extent along Florence Avenue, there is a good bit of what we call the ribbon type business development, a continuous string of shops and stores of practically every character.

Q. How about the distribution of population through this wedge-shaped area which you have described?

A. Well, the least population, naturally, is in the Westchester area itself, which had in 1950 a population in the vicinity of 40 or 45 thousand persons.

Q. We will come to the specific populations in just a minute, Mr. Dunn.

A. Yes. As you move eastward, you get both a denser and a larger total population. The center of the area is probably pretty close to the, oh, intersection of Manchester and Crenshaw Boulevard, I should say.

Q. I should like to discuss the matter of population distribution with you for a moment, if you will. I have put on the board here an excerpt from the larger map which we have had on the easel throughout the trial. You will note on the map there are a series of colored circles. Can you tell me what those circles represent? [2394]

The Court: Are you talking about the big map or the little map?

(Testimony of Cecil L. Dunn.)

Mr. Westbrook: The little map here, your Honor.

The Court: The little map. All right.

The Witness: Yes. These circles are circles of two mile radius drawn around—let me change my glasses. I am so old and blind that I have to keep changing glasses.

These are circles of two mile radius drawn around either some of the theatres which are important in this matter or around some of the intersections which I have just talked about.

For example, the red circle is a circle of two mile radius drawn around the Paradise Theatre, which is right here.

The yellow circle up here is a circle of two mile radius drawn around the La Tijera, which at that time was right there.

The green circle is drawn around the intersection of Manchester Avenue and Market Street, which is the center of the Inglewood business district and where a lot of theatres, including the Fox Inglewood and United Artists, are clustered.

This black circle is drawn around the intersection of Manchester and Crenshaw Boulevard, the area I described as being approximately the center of this Inglewood market area as I described it, which is close to the location of the Academy and Fifth Avenue Theatres. [2395]

The blue circle down here is drawn around the intersection of Vermont and Imperial, which is the location of the Southside Theatre and one of those

(Testimony of Cecil L. Dunn.)

community business centers which I talked about, which is pretty close to the eastern limits of the area I was discussing as being the Inglewood market area.

The Court: May I ask a question?

The Witness: Yes, sir.

The Court: Why do you use the two mile radius?

Mr. Westbrook: We will come to that in just a moment, your Honor.

The Court: Am I anticipating? All right. Go ahead.

Q. (By Mr. Westbrook): Did you, Mr. Dunn, make a calculation based on the 1950 census figures of population within each of these two mile circles?

A. Yes, I did.

Q. If you will call them to me, I will undertake to mark them down on the map.

A. In the red circle—

Q. That is the Paradise?

A. Around the Paradise Theatre, we had 40,200 persons.

The Court: May I ask at what time?

The Witness: The 1950 census.

The Court: 1950 census? [2396]

The Witness: 1950 census data adjusted to the two mile circle.

Around the yellow circle, around the La Tijera Theatre, at that time there were 57,650.

The next one is the green one around the inter-



(Testimony of Cecil L. Dunn.)

section of Manchester and Market, and those theatres there. We had at that time 90,350.

The further over we go, the more we get.

Around the black circle, which was drawn around Crenshaw and Manchester, the location of the Academy Theatre, we had 101,640.

The last circle, the dark blue one, is around Vermont and Imperial, the location of the Southside, and we had 116,230.

So the remark I made a moment ago that there was the least population, as you expect, out at the point of the wedge and the most population over at the base, I think is pretty well borne out.

Mr. Westbrook: Your Honor, I would like to offer this document.

The Court: May I ask a question before you do?

Mr. Westbrook: Surely.

The Court: How do you determine the population in these circles. You say according to the census, but the census made a survey as to blocks and as to squares, and you [2397] are squaring the circle now.

The Witness: That's right.

The Court: Or circling the square. How do you figure out the population?

The Witness: Well, that is — I am glad you asked me that. The census, as his Honor has said, does make its determination on a block basis, and they sum up the blocks in what they call census tracts, and for a dollar and a half or something like that you can buy a map which shows all of the cen-

(Testimony of Cecil L. Dunn.)

sus tracts in a big city like Los Angeles, and you can get all of the population figures for each census tract, the number of people, the number of dwelling units, the number of single dwelling units, the number of multiple dwelling units, and everything else the census counts.

So we got one of those maps and drew a circle of two mile radius on the map, and then we made a list of all the census tracts which fell within the circle. Some of them, of course, were completely contained within the circle that was set up. All we had to do was add up what was in there.

But the others were only partially contained within the circle, so we had to make a census of population of people in the census tract that fell in that circle.

A few minutes ago I mentioned that we made some studies from the ground and some of them off the ground. One [2398] was an aerial photograph.

By comparing the aerial photograph with the census tract map, we found out—the aerial photograph, incidentally, was made at the same time as the census, the same time we are concerned with here.

We found out which parts of that circle were actually occupied by houses and so we made an estimate of the population of the census tracts which were contained within the circle by comparing the census tract map and the aerial photograph, and then we simply made an adjustment by taking the average number of people per dwelling unit and

(Testimony of Cecil L. Dunn.)

determined the population in the dwelling units contained within the circle, and multiplied that, and we came up with the figures here, which I think are probably accurate within a very small margin for area, certainly not 5 per cent.

Incidentally, this isn't a secret method of my own. This is used by the Los Angeles Regional Planning Commission and a lot of other responsible bodies that do this kind of thing all the time.

Q. (By Mr. Westbrook): Based on what you have told us so far about the Inglewood-Westchester area, Mr. Dunn, and the demonstration of the distribution of population which has just been made on the board here, if you were to select a theatre site in the Inglewood-Westchester area, where would you place it? [2399]

The Court: Now, just a moment. We are not interested as to where he would place it today. We are interested in 1949 and 1950.

Mr. Westbrook: I am referring to 1950 and '51, Mr. Dunn.

Mr. Corinblit: I object to that question upon the ground this witness has not been engaged in this sort of business. He hasn't invested in a theatre, in a motion picture theatre.

The Court: That is an argument you can make to the jury.

Mr. Corinblit: And I object to it.

The Court: He is giving his opinion, isn't he?

Mr. Corinblit: He would be entitled to his opinion on this particular subject if he were either a

(Testimony of Cecil L. Dunn.)

theatre man or distributor of motion pictures.

I object on the ground the question is irrelevant.

Mr. Westbrook: May I point out—

The Court: The objection is overruled, unless you want to argue me out of it. Do you want to argue? I might change my mind.

Mr. Westbrook: I was going to point out there are some very responsible businesses that paid him good money to help them on this sort of problem.

Q. Mr. Dunn, do you have an opinion in that regard? A. Yes, I do. [2400]

Q. Would you state it, please?

A. Given the choice of that area I would choose, and without regard to the fact that the Academy Theatre is now there, I would have chosen the site of the Academy Theatre.

Q. Will you state why?

A. It is at the intersection of Manchester and Crenshaw Boulevards, which, I have concluded, is just about the center of that market area in the Inglewood area. It is extremely well located from the standpoint of accessibility and this point of fluidity—this ease of getting at it which I mentioned a few moments ago. That is a major factor.

It is on Manchester Boulevard, which is a big, wide artery running east and west. And it is also on Crenshaw Boulevard, which is almost an equally good traffic artery running north and south.

It is sufficiently far outside the more or less congested Inglewood downtown area so that parking is no problem. Parking is more readily available.

(Testimony of Cecil L. Dunn.)

There is less competition for parking from other establishments.

In short, it is a good location.

Q. Why do you choose a site easterly of downtown Inglewood?

A. Primarily because the bulk of the population in the market area is on that side of the downtown area.

The Court: Didn't I understand you to say that your figures showed that the greatest population was in the circle [2401] surrounding the Southside Theatre?

The Witness: The farther over to the east we get the more, the greater the population in a given circle, yes. But the Southside Theatre is pretty close to what we treated here a moment ago as the extreme east side of this population area.

The Court: But the location of a motion picture theatre is fundamentally determined on population, its patronage and that comes from population.

The Witness: People who go to the theatre, but where it has to have two things; it has to have the people and it has to have a method by which the people can get there.

The Court: Now, the Southside Theatre is also on two good boulevards.

The Witness: It sure is, it sure is, but Mr. Westbrook asked me where in this area I would put one.

The Court: That is right, but I am asking you why would you select the Academy Theatre site in

(Testimony of Cecil L. Dunn.)

favor of the Southside Theatre site when the Southside Theatre has more population surrounding it.

The Witness: The Southside has more population in that circle, yes, but now we have got to consider the relationship of the Southside to the rest of the metropolitan area of which it is a part.

Moving easterly from the Southside along Imperial Boulevard [2402] we begin to come into other subsidiary communities—Compton, and moving on over in the direction of South Gate, Lynwood, which are essentially tributary to the Huntington Park regional center, and there you are running up against the same kind of competition that you would get if you moved in, for instance, closer back toward—excuse me—if you moved closer back toward Inglewood.

The Southside is a good location beyond any doubt.

The Court: When you selected the Academy site as a place you would put a theatre——

The Witness: Right.

The Court: ——did you give any consideration to the theatres that are already established there?

The Witness: Yes, yes.

The Court: That is, you gave consideration to the theatres already within the area, within that circle.

The Witness: Yes.

The Court: And you still say that that would be in your opinion the better site.

The Witness: I sure would, given, of course, the

(Testimony of Cecil L. Dunn.)

ability to set up and operate the kind of theatre which I thought would give the rest of the boys the sort of competition which they needed to keep us all healthy.

Q. (By Mr. Westbrook): His Honor asked you a moment ago if there was any special significance attached to the two-mile [2403] circle other than being a convenient device for measuring the density of the population around the theatres.

Is there any special significance to the two-mile radius?

A. Yes, there is. There is the bulk of a patronage of a suburban or community theatre on subsequent runs, say, 14-20-day runs tend to be concentrated in about two miles around a theatre.

The Court: Why do you say two miles?

The Witness: It is just, sir, it is that is a product of a great many forces. [2404]

For one thing it is the result of the way in which these communities in the Los Angeles basin are made up. Each of them seems to have a sort of a natural, an immediately available local market which is about that big.

The Court: Well, do you want the court to understand and the jury to understand that two miles is a limit?

The Witness: No, sir.

The Court: Of substantial competition?

The Witness: No, sir, I do not. The only thing I said here was that with respect to theatres playing 14 and 21 day availability.

(Testimony of Cecil L. Dunn.)

The Court: And 7?

The Witness: No, not 7. 7 draws farther.

The Court: 14.

Mr. Westbrook: We will come to that, your Honor. We have an actual survey of the patronage of the Academy Theatre on the 7 day availability which is the next subject.

The Court: Go ahead.

The Witness: The only thing I am saying, sir, is that given 14 and 21 day availability, the patronage of a theatre, and I mean by that the bulk of the patronage, say 80, 85 per cent, maybe a little more, tends to come from the area within about two miles of the theatre, give or take a few blocks, give or take a few per cent.

Well, one of the good things about economics is it is not [2405] an exact science.

Mr. Westbrook: Your Honor, if I may, I would like now to offer this document as defendants' next in order.

The Court: It may be received in evidence.

Mr. Westbrook: Y-1.

The Clerk: Y-1 in evidence.

(The document referred to was marked Defendants' Exhibit Y-1, and received in evidence.)

The Court: Mr. Westbrook is looking at the clock, but I want to ask this witness another question or two.

One of the important problems in this case was also in the Baldwin case—and by the way, with ref-



(Testimony of Cecil L. Dunn.)

erence to the other cases that you testified you made a survey for, you also appeared as a witness, did you not?

The Witness: Only, sir, in the Baldwin case.

The Court: You didn't testify in the other cases?

The Witness: No, they were apparently resolved out of court.

The Court: You did testify in the Baldwin case?

The Witness: Yes, sir.

The Court: One of the important matters here is that this jury is going to have to determine the question of substantial competition.

I pointed out to the jury at the beginning of the case that probably everybody would have a different definition of [2406] substantial competition, and now you have given us an entirely different definition this morning. We haven't had your definition before as to what substantial competition means.

Now, you have used here an arbitrary two-mile circle, but you said a moment ago or earlier this morning that your idea of substantial competition depended upon profit and then you qualified your answer and said revenue, income.

The Witness: And then I mentioned space and then I mentioned the pattern of distribution of theatres in the area.

The Court: But considering——

The Witness: I had four different things.

The Court: Let us consider the Paradise Theatre. You have drawn a circle here of two miles.

(Testimony of Cecil L. Dunn.)

The Witness: Yes,—excuse me, yes, sir.

The Court: Now, is it your opinion that the patronage that would go to the Paradise Theatre outside of the two-mile limit would be sufficient to make it either a profitable theatre or an unprofitable theatre?

The Witness: Under certain circumstances, it certainly could be because at least ten per cent of its total patronage is probably from outside that limit.

The Court: You are just guessing now, aren't you?

The Witness: No, I am not.

Mr. Westbrook: Your Honor, we will come to the actual [2407] figures on the Academy, as soon as I can get the next map on the board, which I apprehend will not be until after lunch. But maybe your Honor would be satisfied now for the moment, at least, if Mr. Dunn were to state to you what radius he found the Academy Theatre drawing from on this 7 day availability that you are talking about.

The Witness: The bulk of the patronage of the Academy Theatre playing 7 day policy, was drawn within a radius of about 4.6 miles, four miles.

Mr. Corinblit: Four miles?

The Witness: The maximum—not the maximum spread, but the bulk of patronage and again when I say “bulk of patronage” I mean 80 to 95 per cent which covers probably the bulk of your expenses, was drawn from within a circle of about four miles.

(Testimony of Cecil L. Dunn.)

The Court: And the 14 day availability is two miles—14 and 21 day availabilities?

The Witness: Well, two or two and a half. It tends to get smaller the later the run. The later the run, the smaller the circle.

The Court: Well, Mr. Westbrook, you said I was asking for this information. I am not asking these questions for the information of the court. I am asking them for the information of the jury.

Mr. Westbrook: Yes. [2408]

The Court: I have had a lot of experience on this question and I may resolve this question in my own mind as to whether or not it is substantial competition from my past experience, but this jury hasn't had the benefit of that experience.

Mr. Westbrook: Your Honor is quite right and it is the jury I am interested in and not the court. It is the jury I am trying to get the information to.

I think your questions have been very helpful and we will develop the matter of the 7 day availability and the patronage area later.

The Court: It is 12:00 o'clock and I am quite sure the jury is finding this a very interesting topic. It is a new field of endeavor. You are getting information that I don't think you could get anywhere else even if you tried to pay for it. You are being educated at the expense of the Government.

The Witness: The witness is having a good time, too.

The Court: The only requirement is that you remember the admonition of the court heretofore

(Testimony of Cecil L. Dunn.)

given and keep an open and free mind. Don't come to any conclusion until you have heard all of the case.

We are about to take another recess and again it is my duty to admonish you not to discuss this case with anyone. You are not to permit anyone to discuss it with you and you are [2409] not to formulate or express any opinion as to the rights of the parties until it has been finally submitted to you.

With that admonition we will now recess until 2:00 o'clock this afternoon.

(Whereupon at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same date.) [2410]

Tuesday, August 7, 1956, 2:00 p.m.

The Court: Stipulate the jury is present in the box?

Mr. Corinblit: So stipulated, your Honor.

Mr. Mitchell: Yes.

The Court: You may proceed.

#### CECIL L. DUNN

the witness on the stand at the time of the recess, having been heretofore duly sworn, was examined and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Westbrook): Mr. Dunn, I mentioned this morning that in 1951 you had conducted an actual patronage survey of the Academy Theatre. Would you describe the procedure followed in making such a survey?

(Testimony of Cecil L. Dunn.)

A. Yes. An actual patronage survey is a case of what I think we can call market research work. The objective is to find out where the people who patronize a given store or theatre come from, in order that you may be able to define the market area upon which that establishment can draw.

A survey of this kind involved, of course, approaching the patrons of the theatre, in this case, and asking them [2411] where they came from or where their homes are, so to that extent it is an interviewing sort of survey, but it is not a case of an interviewing survey that we think of when we think of a public opinion survey, which I suppose is much more widely known.

In the case of the public opinion survey you are asking the respondent to answer a hypothetical question, what would you do or what do you think about something, or what is your opinion of.

In the case of market research, like a theatre survey, you are asking him for a matter of fact, where do you come from, or where do you live. You are not asking him, what would you do under certain circumstances, or what he thinks. You are simply asking him to tell you something which is a matter of predetermined matter of fact, and when you count it, you are counting something which is considerably more tangible, I think, than when you are summing up the answers to opinion surveys. That is not, of course, to say that opinion surveys aren't very useful, but that is a different kind of technique than is employed here.

(Testimony of Cecil L. Dunn.)

Now, that is exactly what we did in the case of the survey in the Academy Theatre. We employed a group of interviewers who had worked in each case at least two years with an established market research firm here in Southern California, and who consequently had had experience in interviewing of this [2412] character.

We stationed them in the lobby of the theatre and asked them to approach the patrons as they entered the theatre, telling them what they were doing, they were trying to determine the area from which the theatre drew its patronage, and simply asking them if they wouldn't give their home address. They were not asked for any identification. They weren't asked for their opinion on any matter. They were given to understand, if they raised the question, that the information would not be related to them in any way and would not be used for any other purpose, for solicitation or mailings, or anything of that kind, but simply where did you come from to attend the theatre this afternoon or tonight.

In that way, we secured the home addresses of the great bulk of the patronage of the Academy Theatre on two different days. We used a week day, Thursday, the 31st of May, and a week-end day, Saturday, the 2nd of June, in order to eliminate any bias that might come from the patronage which the theatre draws on a week-end day as opposed to the patronage which it draws on a week day.

Having obtained all of those items, and we got

certainly 90 or 95 per cent of the total number of people who were there—the only reason that I recall for not getting 100 per cent is because people came in in groups and you could not ask them all—this isn't the sort of thing people refuse [2413] to answer, not being asked anything which is in any way personal. We took those addresses and distributed them on a map like that map which is now on the board, in order to show on the map, with the use of a series of dots, the distribution of the theatre's patronage.

Then having done that, we analyzed it in a variety of ways to see how that influenced the market which the Academy Theatre enjoyed.

All told, I think that we interviewed something in excess of 1600 persons—1683, as a matter of fact, and that, as I have said, was certainly close to 90 or 95 per cent of the total patronage on those two days.

Q. Did you find any difference in the distribution of patronage on the two days?

A. Yes, we did. There was substantially more patronage on the week-end day than there was on the week day.

Q. Did that appear to affect the geographic spread in any way?

A. No, it didn't. We started with the week day attendance and began spotting them on the map, and very soon a pattern began to emerge. Things like this have a tendency to be remarkably uniform, simply because, as I was saying this morning, so

(Testimony of Cecil L. Dunn.)

many market areas have a distinctive characteristic anyway.

We started with the week day patronage, which, as I [2414] said, was smaller than the week-end day, and by the time we had spotted a couple of hundred of those addresses, why, the pattern was pretty well complete.

Then we went on with the rest of the week-day and on through the week-end day and all that happened was that we just began filling in the spaces. The pattern stayed just about the same. [2415]

Q. Now, what is the effect of a sample like this on two days in indicating the usual pattern of patronage for a theatre or any other business establishment?

A. I think it indicates it quite precisely. I mean this is my idea of a good way of showing the area from which the patronage is drawn.

In using two days you get away from any error that might come from a single day by using a week day against a weekend day. You eliminate that bias, and in view of the fact that—well, in all of these studies of this character which I have done, in view of the fact that very early in this process you see a pretty distinct pattern develop and then the rest of the information just sort of fills out the pattern.

I am satisfied that this is a good method of representing the market area of a theatre. And, again, I am not alone in this opinion. I mean, this is a standard technique. Everybody who does this sort of thing does it this way, not only with re-



(Testimony of Cecil L. Dunn.)

spect to theatres, but you do it with all kinds of economic information which might influence the location of a store, the location of a new traffic artery, the development of parking space and all of the usual economic questions which are an issue.

Q. Now, would you identify the particular two days that were involved on this survey?

A. I think I indicated it was Thursday, [2416] the 31st of May, 1951, and Saturday, the 2nd of June.

Q. 1951? A. 1951, right.

Q. Now, the program at that time at the Academy Theatre was what?

A. The Lemondrop Kid.

Q. Do you recall the second feature?

A. Fighting Coast Guard.

Q. That was on a 7 day availability?

A. Yes, it was.

The Court: The same picture on both days, the same program on both days?

The Witness: Yes, sir.

Q. (By Mr. Westbrook): Was there any other theatre in the Inglewood-Westchester area playing the program at the same time?

A. The Southside was playing The Lemondrop Kid the same days.

Q. Now, the map to which you referred, Mr. Dunn, is the map we have here on the board, is that right? A. That is right, yes.

Q. Now, you will note that there are some col-

(Testimony of Cecil L. Dunn.)

ored areas on this map. The Academy Theatre is located here, where this little triangular indication is, is that correct?      A. That is right. [2417]

Q. You will note that there are some colored areas in the vicinity of the Academy Theatre at Manchester and Crenshaw and some additional colored areas in the vicinity of downtown Inglewood.

Will you state the significance of that coloration?

A. Yes. Each of those little squares, some of which are painted yellow and some of which are painted green, there is a square a half mile in size—that is to say an area of a quarter of a square mile. We used those because in those areas the concentration of dots was so great that to put on the red dots would have just left—you couldn't have distinguished one from the other. It would have been a solid mass of red dots, so each of the yellow squares there contain one and a half per cent of the total number of responses—the total number of addresses which we got, and the other ones, the green ones contain from two to four per cent, that is to say an average of three per cent of the total number.

That is simply a matter of convenience to avoid just covering the map with so many dots that you couldn't see the difference between them. But, of course, that indicates the great concentration of the patronage. I mean there is a very substantial fraction of the patronage in there.

Q. What is the percentage of patronage in the colored squares that you mentioned? [2418]

(Testimony of Cecil L. Dunn.)

A. I think it is about 27 per cent, if I am not mistaken.

Q. 27.1 on the map? A. 27.1, thank you.

Mr. Corinblit: In all of the colored squares?

The Witness: In all of the colored squares.

Mr. Corinblit: Green and yellow.

The Witness: The balance, of course, is represented by those single dots scattered all around the map. Each one of those red dots indicates one address.

Q. (By Mr. Westbrook): I note some that are scattered up here in the Westwood area and in Santa Monica and so on. Each of those represent one person, is that correct? A. That is right.

Q. And then where there is the greater intensity of red dots closer to the Inglewood-Westchester area, each dot represents one person attending the theatre? A. One person, right.

Q. Now, you mentioned this morning the fact that the survey showed that the bulk of the patronage—I believe you said 85 to 90 per cent of the attendance at the Academy Theatre, came from within a four mile radius. I wonder if you would step down to the map and point that out at the present time.

A. Yes. There is a scale down here on the bottom of [2419] the map. This is three miles here and the Academy is right here.

Four miles would take us up approximately here, and then the distance down here and then over to

(Testimony of Cecil L. Dunn.)

here and if you can think of a circle drawn there, you can see the great bulk of the dots except those scattered ones up in here, and if you look at it you will see a few scattered ones clear over in here—they would fall right in here.

The Court: Would that four mile radius include the Paradise Theatre?

Mr. Corinblit: No, sir.

Mr. Westbrook: As the crow flies, your Honor, within about a half mile of the Paradise Theatre, more or less.

The Court: I was asking the witness and not counsel. The witness is the only one sworn.

Mr. Corinblit: There is a stipulation on that point. That is the only reason I mentioned it.

The Court: It doesn't include the Paradise Theatre?

The Witness: It falls, as Mr. Westbrook has said, about a half mile as the crow flies. It is four and a half miles if you follow the various courses of Manchester Avenue which wanders around.

Mr. Corinblit: I take it there is no change and that we still have the same stipulation?

Mr. Westbrook: The distance, following the various [2420] turnings, going north a half mile and coming back a quarter of a mile and then another quarter of a mile is about 4.5 miles.

The Court: When this stipulation was entered into, I didn't examine as to whether we were talking about as a crow flies or as a pigeon flies or a

(Testimony of Cecil L. Dunn.)

turkey walks. I took it as meaning four and a half miles.

Mr. Westbrook: Counsel intended it to be the shortest driving distance between the two theatres using the normal route.

Mr. Corinblit: That is correct.

The Court: By automobile.

Mr. Corinblit: Yes.

Mr. Westbrook: There was nothing said about how the crow flies.

The Court: All right.

Q. (By Mr. Westbrook): Now, Mr. Dunn, with specific reference to the westerly portions of this distribution of patronage, did you make at my request a computation of the actual number of patrons attending the Academy Theatre but living beyond the mid-point the Paradise and the Academy?

A. Yes, I did.

Q. Now, just to point that out on the map, Mr. Dunn, there is a red line drawn here. Will you state what the red line symbolizes? [2421]

A. That is Oak Street and a prolongation of Oak Street.

It represents the mid-point of the four and a half-mile distance between the two theatres.

Q. Just because we have this confusion on crow flight versus driving distance, will you tell us what that is? A. That is driving distance.

Q. Would you state along what route?

A. From the Paradise Theatre up La Tijera to

(Testimony of Cecil L. Dunn.)

Manchester and over Manchester to the Academy Theatre, following Manchester as it is displaced in there.

Q. And the mid-point you state is at the intersection of Oak and Manchester, is that right?

A. That is right.

Q. What is the difference between the Academy and the red line, the mid-point?

A. Two and a quarter miles.

Q. Now, will you state the percentage of the patronage of the Academy who came from the area west of the mid-point between the Paradise and the Academy?

A. Out of 1683 represented by the survey, there were 243 west of the mid-point. That is 14.4 per cent of the patronage came from west of the mid-point of the distance between the two theatres.

Q. I am marking on the map here, Mr. Dunn, 14.4 per cent.

Did you also make a computation of the total number of patrons coming from the area west of downtown Inglewood? A. Yes, I did.

Q. I note on the map we have a green line. Will you indicate what that symbolizes?

A. That is Market Street and its prolongation. It is the main street of the Inglewood business district, the center of downtown Inglewood for all practical purposes.

Q. I note that we have a concentration of patronage lying westerly of downtown Inglewood. Would

(Testimony of Cecil L. Dunn.)

you state the approximate percentage that lies within that group of yellow squares of patronage of the Academy?

A. There are four squares in there?

Q. Yes. A. There is 6 per cent in there.

The Court: You mean between the main street of Inglewood to the red line is 6 per cent, is that right?

The Witness: No, sir, not quite. In this mark of four yellow squares, there is 6 per cent.

The Court: In the four yellow squares?

The Witness: Yes. Actually, between Market Street and the mid-point—

The Court: Talk to the jury. [2423]

The Witness: I'm sorry.

Q. (By Mr. Westbrook): We will come to that in just a minute, Mr. Dunn. A. All right.

Q. With reference to the prolongation of Market Street here north and south, I take it you did make a count of the actual number of patrons of the Academy coming from the area west of the green line or, in other words, west of downtown Inglewood? A. Right.

Q. Do you have that number, sir?

A. 441.

Q. Translating that in terms of percentage, what does it come out to? A. 26 per cent.

The Court: Is that from the green line to the red line, or from the green line west?

The Witness: That is from the green line west.

(Testimony of Cecil L. Dunn.)

The Court: That includes the other percentage then.

The Witness: Yes. So between the green line and the red line, there is what? 11.6 per cent.

Q. (By Mr. Westbrook): Are there any factors present in this Inglewood area, and I call your attention particularly to the westerly portion of the Academy patronage, which would [2424] indicate to you that people living in that area would tend to go one way or the other to the theatre?

A. Well, in general, the Inglewood business district as such, as defined by a line like Market Street and the business establishments that are grouped around there, probably tends to limit the way that people move.

Q. In what way, sir?

A. I would think there would be a disposition to avoid going through the Inglewood business district, if you could get the same thing by not doing so.

Q. Does the configuration of streets and movement of traffic have anything to do with that?

A. Yes, it does. Manchester Boulevard, of course, is the principal east and west artery there and lends itself very readily to the flow of a considerable volume of traffic.

Market Street at that point is not such an important artery. It is by no means as significant as a method of north and south movement as is Crenshaw a little farther to the east.



(Testimony of Cecil L. Dunn.)

Q. What about such streets as La Tijera and Florence, what influence do they have?

A. They, too, have a considerable effect upon the flow of traffic.

Q. In what way?

A. La Tijera, for example, provides essentially a means [2425] of communication north and south and north of Inglewood in a generally northeasterly direction, and Florence Avenue is similar in its effect to Manchester, but perhaps—well, as a matter of actual fact, somewhat less useful, less significant than is Manchester, because Florence is somewhat choked as it goes through the Inglewood business district.

There is sort of an interesting situation existing there on Manchester, which in part, which, in fact, accounts for that separation of those two blocks which you can see here on the map. This is the area we were talking about this morning, the Inglewood Park Cemetery here, the country club, and then Hollywood Park Race Track in there, an area which is for all practical purposes not populated, and almost as though these two blocks, as though they could be ignored, and these two blocks could be drawn together, because there is no business frontage along Manchester Boulevard here. It is a great wide boulevard with little, if any, parking, and people can move along quite rapidly. It forms quite a corridor there and expedites traffic. It is al-

(Testimony of Cecil L. Dunn.)

most as though you could treat these two as being drawn together.

Q. Based upon the distribution of patronage shown by the map which you have prepared, do you have an opinion as to the effect of having the Academy and the Paradise play a program day and date on the 7 day availability, using the same motion picture? [2426]

A. Yes, I do.

Q. Will you state that opinion, please?

Mr. Corinblit: Your Honor, I object to this question as being without foundation. There is a tremendous gap in the testimony of this witness between a description of the areas and moving to the effect of day and date. I don't see any foundation here of this witness' knowledge as to what happens when pictures play day and date. There has been no experiment, although there were plenty of opportunities, as to when the Academy and Paradise play day and date, at least during this period.

Mr. Westbrook: There were none such.

The Court: May I ask the witness a question?

Based on your study of this area and the report that has been made relative to patronage, do you have any opinion as to whether or not the Academy Theatre and the Paradise Theatre were in substantial competition in 1951?

The Witness: Yes, I do.

The Court: Now, is there an objection to that?

Mr. Corinblit: Having in mind, your Honor, the standards the witness stated about substantial com-

(Testimony of Cecil L. Dunn.)

petition, I think there are possible standards to work with, but he has given the standards, and I would object on the ground it is too vague and indefinite.

The Court: Objection overruled. I just wanted to [2427] get it in the record, if you have an objection.

What is your opinion?

A. I have a very firm opinion on that. I think with the Academy Theatre and the Paradise Theatre playing day and date——

Mr. Corinblit: Just a minute. I'm sorry.

The Court: That wasn't the question.

The Witness: All right. Strike that part. I think they are in substantial competition with each other, were in 1950 in substantial competition.

The Court: As far as substantial competition is concerned, as I understand your definition or one of your definitions, it is based upon the patronage it draws into the theatre.

The Witness: That's right.

The Court: It wouldn't make any difference, would it, as to whether they played the same picture or some other picture?

The Witness: Oh, yes, it would.

The Court: On substantial competition?

The Witness: Surely.

The Court: Suppose you had one picture in the Paradise, and a picture in the Academy, and they are playing the same days, but they are not play-

(Testimony of Cecil L. Dunn.)

ing the same picture. Would there be substantial competition? [2428]

The Witness: There would be less competition than if the two theatres were playing the same picture.

The Court: Do I understand now from your testimony that substantial competition in your mind only means that situation that exists when the theatres play the same picture?

The Witness: No, sir. No, I do not. The only thing I have said on that point is that the competition is considerably enhanced. It is tougher, more substantial, if you will when they are playing the same picture than when they are playing different pictures. That is inherent in the economics of the theatre market.

The Court: All I asked you was whether or not there was substantial competition, not in playing the same picture, but playing all pictures.

The Witness: Yes, I would say they were.

The Court: That is your opinion.

The Witness: That's right.

The Court: But it is also your opinion that if they play the same picture——

The Witness: Then it gets tougher.

The Court: There is more substantial competition?

The Witness: Yes, sir. I think that would be very damaging.

(Testimony of Cecil L. Dunn.)

The Court: Now you may go back to your question, if you can remember it. [2429]

Mr. Westbrook: Thank you, your Honor.

Q. Now, Mr. Dunn, you have referred to the difference between playing different pictures and competing with the same program with each other on the 7 day availability. A. That's right.

Q. I will direct your attention to the latter of those two situations, that is, where you have a day and date exhibition at the Paradise here in Westchester and at the Academy over at the intersection of Crenshaw and Manchester, the same program on the 7 day availability. Now, what, sir, is your opinion with regard to the extent of the competition between those two theatres for patronage?

Mr. Corinblit: Just a minute. I object to that question.

The Court: Just a minute. I have to object to the question. I think you are entitled to ask the witness if there is substantial competition, but you say what is the extent of the competition. Are we going to get into percentages?

Mr. Westbrook: I think so, your Honor. We are prepared to.

The Court: All right, but I think you should——

Mr. Westbrook: You had Mr. Schreiber on the stand and he speculated as to what percentage constituted substantial competition, and we are prepared to deal with those [2430] percentages.

The Court: I tried to find out from this witness

(Testimony of Cecil L. Dunn.)

what was his standard and what percentage he used, and his definition is if it took patronage from one theatre to 1 per cent, it is substantial, because the 1 per cent might mean the difference between profit and loss.

Mr. Westbrook: I don't think we have to argue about 1 per cent in this case, your Honor. I think if we proceed you will find that the potential loss of patronage from day and date exhibition is so significant that nobody would be prepared to disregard it.

The Court: May I ask this witness a question?

Mr. Westbrook: Certainly.

The Court: Did you make a survey relative to the two theatres, the Paradise Theatre—did you make a survey when the pictures were playing day and date, to determine where the patrons were coming from?

The Witness: There weren't any.

The Court: I beg your pardon?

The Witness: There were no such cases.

The Court: You mean there was no time when they played day and date?

The Witness: Right, but I have done the best I can by the comparison of what I am convinced are comparable programs and by other measures to satisfy myself that there is [2431] certainly substantial competition between the theatres.

The Court: Mr. Westbrook, you commented a little while ago that I allowed Mr. Schreiber to tes-

(Testimony of Cecil L. Dunn.)

tify. You remember I allowed him to testify because he was the owner, and the owner can testify as to value when a by-stander can't, without laying a foundation.

Mr. Westbrook: I will agree with your Honor that a by-stander couldn't, that is to say, I couldn't come in and testify, because I am not an expert in this business, but you have on the stand a man who has made this precise type of evaluation for many different business organizations, and he certainly is qualified as an expert.

The Court: I have allowed him to testify and give his opinion, and that's all he can do, is give his opinion and the reason for his opinion. I have allowed him to give his opinion to the question of whether or not there was substantial competition. Now, he says there was no survey relative to what the percentage was between the two theatres if they played day and date. It is pure speculation. It was speculation as far as Mr. Schreiber was concerned, but I allowed him to testify because he was the owner.

Mr. Westbrook: Your Honor, we have the actual patronage of the theatre, but I think we may get to the same result if I ask Mr. Dunn the reason for his opinion that the theatres were in substantial competition. [2432]

The Court: All right. You can do that.

Q. (By Mr. Westbrook): Mr. Dunn, will you please state.

A. Yes. The basic reason why I think that the

(Testimony of Cecil L. Dunn.)

theatres were in substantial competition is the way in which they are—first, the way in which they are related to each other geographically. I am convinced from my studies of theatre patronage that theatres playing on a 7 day availability draw the bulk of their patronage from a circle of approximately four miles in radius surrounding the location of the theatre.

I am further convinced that as the availability—as we get to subsequent runs, the availability runs to 14 and then 21 days, that the size of the circle diminishes somewhat. It is four miles on 7 day availability. It is two to two and a half miles, maybe a little larger, on 14.

By the time we get down to 21, it is the vicinity of two miles or so.

In view of that distribution of patronage, where those circles would overlap, that the two theatres playing the same attraction would be in direct competition for at least that portion of the patronage which fell in the overlapping area of the two circles. [2433]

Q. Now, will you describe that area with reference to the Paradise and the Academy, please?

A. Yes. The four-mile circle which we drew with respect to the Academy Theatre—I will show you—I will indicate it again. That four-mile circle with respect to the Academy Theatre——

Q. Will you move around on this side, Mr. Dunn?

A. I am sorry. It would be this one which I in-



(Testimony of Cecil L. Dunn.)

dicated a moment ago and certainly included the great bulk of the Academy patronage.

Now, if we take a four-mile circle and describe it around the location of the Paradise Theatre right here, it falls over here almost to the actual location of the Academy Theatre and out here it falls approximately a half mile out into the ocean where there is no significant patronage, of course.

So remembering that if this end of the triangle was the lightly populated area and remembering that the Paradise would have to draw from a four-mile circle, part of the four-mile circle from which it could draw, because it is the part where the people are, is the part from here over to here. In other words, on a 7 day availability between the two theatres, certainly 40 per cent of the patronage of the Academy and 75 per cent of the patronage of the Paradise would be subject to headon competition. [2434]

Now, on subsequent runs as the size of the circles diminish, the bite would be less severe, but it would still be a bite.

And in view of the fact that even under existing circumstances there were no day and date runs 14.4 per cent of the patronage lies west of the mid-point and 26 per cent of it west of the Inglewood business district which pretty well, I think, defines who goes this way and who might go this way.

There is certainly substantial competition there even under those circumstances.

(Testimony of Cecil L. Dunn.)

The Court: May I ask the witness a question.

Mr. Westbrook: You certainly may, your Honor.

The Court: Assuming that where these two circles overlap each other——

The Witness: Yes, sir.

The Court: If the two theatres are playing the same pictures the people who live in that overlapping area can go either way—they can either go over to the right or to the left.

The Witness: Right.

The Court: According to their personal desires. Maybe it is a question of transportation. Maybe it is a question of parking. Maybe they are going to go for some other purpose but they go either way.

The Witness: They go one way or the other.

The Court: Assuming that they didn't play the same picture—they were playing different pictures, would the people who are in that overlapping area go to the right to see a particular picture or to the left to see a particular picture. Do they go to see a particular picture or do they go to the theatre?

The Witness: I think the whole economics of the motion picture business shows that while it is pitched upon the proposition that people go to see a particular picture, because if they don't the whole theory of the exclusive nature of the picture would break down and in point of fact it doesn't break down. It stands up.

The Court: Then if they had an A picture, a number 1 picture at the Paradise——

(Testimony of Cecil L. Dunn.)

The Witness: Yes.

The Court: ——and a turkey or a dog over at the other theatre——

The Witness: Or both.

The Court: ——the people would go to the Paradise Theatre?

The Witness: A larger number of them would go to the Paradise Theatre.

The Court: And under those conditions, that is, if one theatre had an outstanding picture and the other theatre had a very poor picture, then there wouldn't be, in your opinion,—there wasn't any substantial competition? [2436]

The Witness: No. What I said was that as the coincidence of runs got closer and closer together, the competition got tougher and tougher.

The Court: But earlier you said, maybe inadvertently, that there was no competition if they didn't play the same pictures.

The Witness: No, sir, no, sir.

The Court: If they didn't——

The Witness: No, no, no. I didn't say that and if I did say that, that was certainly inadvertent.

The Court: There is competition regardless?

The Witness: There is competition regardless, but the closer they get to day and date runs, the closer the competition becomes and on day and date runs it would certainly be—well, it would certainly be in the area of substantiality. In fact, it would be real tough.

(Testimony of Cecil L. Dunn.)

The Court: If it was day and date?

The Witness: If it isn't day and date, it isn't quite as rugged as I was trying to draw the circles——

The Court: Just a minute. If it wasn't day and date, then the question of whether or not they would go to the right to the Academy or to the left to the Paradise would depend largely upon the picture that was playing in the respective theatres?

The Witness: Right, right. [2437]

Q. (By Mr. Westbrook): Now, Mr. Dunn, in the course of your study of this problem out in the Inglewood-Westchester area, did you have occasion to examine those instances where the Paradise Theatre did in fact play day and date with other theatres in the area? A. Yes, I did.

Q. Now, in making that study will you state what different availabilities you included?

A. 7, 14 and 21 days.

Q. Now, was there any reason for including all three of those availabilities in this one particular study?

A. Yes. In order to get it to cover the range of day and date exhibitions between—when the Paradise played day and date with other theatres in this area, we had to run that clear through that range of availabilities.

Q. Now, the purpose of the study was to compare the results achieved at the Paradise with the results achieved at another theatre on the same availability with the same top feature?

(Testimony of Cecil L. Dunn.)

A. That is correct.

Q. Now, in that connection how many total pictures did you examine—total programs?

A. A total of 29 and—a total of 30 different pictures.

Q. And in any of these instances, did you have examples [2438] where exactly the same program played at the Paradise and other theatres?

A. Yes. There were two such instances in which—I mean there were two theatres which played identical programs—one theatre played identical programs on three different occasions with the Paradise and the other two on different occasions with the Paradise.

Q. Now, I would like to go to the board again with you, Mr. Dunn, and go down through a tabulation of the results of that comparison.

I am going to put at the top of the sheet "Gross Admissions Comparison."

A. As a matter of fact, Mr. Westbrook, there are three different theatres which on occasion played identical bills with the Paradise.

Q. I think perhaps we can point that out as you go along, Mr. Dunn.

The Court: Just a little while ago you said that you made a study of these theatres. Did you make a study relative to interviewing the patrons?

The Witness: No, sir, this is something different.

The Court: This is a different kind of study?

The Witness: That is correct, but this is still based upon recorded facts.

(Testimony of Cecil L. Dunn.)

The Court: But you didn't interview the people [2439] as they came into the theatre?

The Witness: No. This one doesn't involve interviewing the people.

Mr. Westbrook: There is one other that did.

The Witness: Yes, but it is not involved in this particular subject which we have under discussion at the moment.

Q. (By Mr. Westbrook): Where you did interview the patrons? A. Yes.

Q. Now, referring back to the study we are talking about on the gross comparisons, I will indicate here. And then the number of programs here and then a column headed "Paradise" and a column headed "Per Cent" and another column headed "Other theatres," and out here we will have the name of the other theatre.

Now, referring to the Fifth Avenue and the Paradise. How many occasions during the year's period that we are talking about here in '50 and '51 did the Paradise and the Fifth Avenue play day and date? A. Twice.

Q. Now, one of those instances was——

A. An identical bill.

Q. So we will put that down separately and I will put an asterisk out here and that will mean it is identical bill. [2440]

What was the gross admission prices at the Paradise on the first week's exhibition of that identical double bill? A. \$1326.

(Testimony of Cecil L. Dunn.)

Q. And what was the gross admissions at the other theatre, in this case the Fifth Avenue?

A. \$2318.

The Court: May I inquire if they charged the same price or do you know?

The Witness: I don't know.

Mr. Corinblit: Your Honor, you might also want to inquire as to whether they covered the same dates completely.

You won't argue that there were more playing days at the Fifth Avenue than at the Paradise? We have gone through this before.

Mr. Westbrook: That is correct. The schedule I handed you shows two days extra playing time. You may point that out when you get up here.

The Court: As far as the time is concerned, you say they played the program—the same program. Did they play the same program the same number of days?

Mr. Westbrook: There was two different play days at the Fifth Avenue as Mr. Corinblit pointed out,—two days more at the Fifth Avenue.

Q. Now, what was the percentage of the Paradise gross admissions on that exhibition to the Fifth Avenue gross [2441] admission prices, Mr. Dunn?

A. 57.

The Court: Now, will you explain what you mean by that? The percentage of what was 57 per cent?

The Witness: \$1326 is 57 per cent of the \$2318.

Q. (By Mr. Westbrook): In other words, the

(Testimony of Cecil L. Dunn.)

Paradise grossed 50 per cent of what the Fifth Avenue did?      A. Right.

Q. And Mr. Corinblit pointed out there were two extra play days at the Fifth Avenue.

A. That is right.

Q. Now, the other picture that you mentioned playing at the Fifth Avenue had a different second feature, is that right?      A. That is true, yes.

Q. And what was the gross on that picture at the Paradise?      A. \$1890.

Q. And what was the gross at the Fifth Avenue?

A. \$2760.

Q. Now, in that instance I believe it is correct, is it not, that there were also two extra playing days at the Fifth Avenue, but it played the picture—it began two days later than the Paradise?

A. That is correct, yes. [2442]

Q. And what was the percentage of the Paradise admissions on that program?

A. 68 per cent.

Q. Now, going on, did you find any instances where the Fox-Inglewood and the Paradise played day and date?

A. Yes, there were five occasions when at least the top feature played day and date at the Fox-Inglewood and the Paradise.

Q. Now, on what availabilities did those programs play?

A. Four of them were 14 days and one 21 days.

Q. Just to indicate this, Mr. Dunn, I am going to go back here and put in parentheses, "14" to in-



(Testimony of Cecil L. Dunn.)

indicate a 14 day availability on the first program at the Fifth Avenue and 14 to indicate that availability on the second program at the Fifth Avenue.

Is that correct? A. That is correct.

Q. And this one you say is 14?

A. 14 in four instances, and 21 in the fifth.

Q. I will put a little "4" above there.

Now, in that instance, how did you make a comparison between the two theatres?

A. In this instance I simply summed up here the total gross admissions of the first week of the program.

Q. And then average it? [2443]

A. Averaged it, right.

Q. Will you give me the average weekly gross on the programs at the Paradise?

A. Average weekly gross at the Paradise in the five instances playing day and date with Fox, Paradise was \$1520, and the Fox \$2651.

Q. And what was the percentage of the Paradise?

A. 58 per cent. The Paradise gross was 58 per cent of the Fox.

The Court: Don't you want to put down the name of the theatre, Mr. Westbrook?

Mr. Westbrook: Yes, I am sorry. Thank you.

Mr. Corinblit: You will agree with me, counsel, that in the case of two pictures there was an extra day on which the other theatre played, is that right?

Mr. Westbrook: I think, counsel, you will find in the case of the first picture that there is an error

(Testimony of Cecil L. Dunn.)

in the work sheet and that Sunset Boulevard played identically at the Fox and Paradise.

Mr. Corinblit: Then this exhibit is not correct?

Mr. Westbrook: I think that is an error. We will come to that.

Mr. Corinblit: On the picture Rocky Mountain there was one extra day for the Fox?

Mr. Westbrook: That is correct, one of the five pictures there was one extra day for the Fox. [2444]

Q. (By Mr. Westbrook): Now, with regard to the Imperial Theatre, Mr. Dunn, did you find any instances where the Imperial and Paradise played day and date?

A. Yes. There were three instances there. Two of them were 7 day availabilities and the third was 21. In the case of one of the two 7 day pictures, it was concurrently playing at the same time on a 7 day availability at the Southside.

Q. One of the two, you say?

A. One of the two, yes, one of the two 7 day pictures.

Q. That was Born Yesterday?

A. Yes, sir. I followed the same practice here and have summed up and averaged the first week's grosses in each instance, and here the Paradise had an average of 2,179, and the Imperial 1,556.

Q. Now, in this instance the Paradise outgrossed the Imperial?

A. Right, 138 per cent, that is to say, 38 per cent more.

Q. Just to complete the record with regard

(Testimony of Cecil L. Dunn.)

to playing time, according to the summary, is there any instance where the Paradise played fewer days than the Imperial?

A. No. As a matter of fact, in one instance here the Imperial played fewer days than the Paradise.

Q. That is true in two instances, is it not?

A. I am looking at my—yes, it is. One picture [2445] started, one of the 7 day pictures started two days later at the Imperial, and the 21 day picture ended three days before at the Imperial.

Q. Did you find any instance where the Paradise and the La Tijera played a picture day and date?

A. Yes, there is one such instance. A picture played on a 7 day availability at both the Paradise and the La Tijera, and at the same time at the Southside and the Imperial.

Q. That was again Born Yesterday?

A. That was Born Yesterday. Everybody had it.

Q. What was the gross in the Paradise?

A. The gross in the Paradise on that occasion was 3,718, and at the La Tijera 3,941, and the Paradise gross was 95 per cent of the La Tijera.

Q. Now, with reference to the Rio Theatre.

A. Yes. Here there are nine different occasions on which the Paradise and the Rio played day and date, one 7 day availability, one 14 day, and the other seven were 21.

Q. Were what, sir?

(Testimony of Cecil L. Dunn.)

A. Were 21 day availability.

Q. Were any of those programs identical programs?

A. Three of them were identical bills, the 7 day bill, the 14 day bill, and one of the 21 day bills were identical.

Q. On those three identical programs, what was the average gross in the Paradise? [2446]

A. On those three identical programs, the average gross in the Paradise was 1,355, and at the Rio 1,515. In other words, the Paradise grossed 89 per cent of the gross at the Rio.

Q. There were 6 additional programs?

A. There were six 21 day programs, yes.

Q. Where the Rio and the Paradise played day and date with the top feature?

A. That's right, and one of them was an identical bill. In that case the——

Q. We have already eliminated the one with the identical. A. So we have. Excuse me.

Q. We have six other programs.

A. Six other programs.

Q. On the 21 day availability.

A. Right. The average gross in the Paradise was 1,868.

Q. And the average gross at the Rio?

A. 1,611. The Paradise was 22 per cent more in this instance, 122 per cent.

Q. I am putting it down 122 per cent.

A. Yes, which means 22 per cent more.

(Testimony of Cecil L. Dunn.)

The Court: Will you put down the name of the theatre?

Mr. Westbrook: Yes, sir. I'm sorry.

The Witness: That is also the Rio. [2447]

Q. (By Mr. Westbrook): Also the Rio. Was there any instance where the Paradise and the Southside played day and date?

A. Yes. There were four.

Q. On what availability were those pictures?

A. On 7 day.

Q. What was the average gross of the Paradise on that group of four pictures? A. 3,677.

Q. And the average gross of the Southside?

A. 4,151.

Q. What was the percentage of the Paradise gross to the Southside? A. 88.

Q. Now, with reference to the United Artists Theatre, did you find any instances where the Paradise and the United Artists played day and date?

A. Yes, sir. There were three, two identical bills which played on 7 day availability, and one other instance on 14 day availability.

Q. Now, the two identical bills, you say, were on 7 day availability? A. Yes, they were.

Q. What did the Paradise gross on the average on those two bills? [2448] A. 1,398.

Q. What did the United Artists gross?

A. 1,639.

Q. What was the percentage of the Paradise gross of the United Artists gross? A. 83.

(Testimony of Cecil L. Dunn.)

Q. You say there was another program that played day and date top feature?

A. Yes, in which the top feature was played day and date, in the two theatres on 14 day availability. In that instance the Paradise grossed 1,509, and the United Artists 1,879, or the Paradise was 79 per cent of the United Artists gross.

Q. Now, Mr. Dunn, we come to the only remaining conventional theatre in the area, the Academy. I believe you have already stated that you found no instance where the Academy and the Paradise played day and date.

A. That is correct.

Q. Did you make a study, however, to study the relative performance of the Paradise and the Academy?      A. Yes, I did.

Q. Will you state in what way?

A. What I have undertaken to do here was to compare the relative performance of the Paradise and the Academy on two groups of comparable pictures, two groups that in other markets [2449] sold just about as well. The reason I have had to go to this is because, as we have just been pointing out, there were no day and date exhibitions of the Paradise and the Academy.

Mr. Westbrook: Your Honor, I hadn't noticed that it was 3:00 o'clock. I think it may take us a little while to develop this and perhaps this is a good time to recess and then we can come back to it.

The Court: Ladies and gentlemen, we are about

(Testimony of Cecil L. Dunn.)

to take another recess. Again it is my duty to admonish you you are not to discuss this case with anyone, you are not to allow anyone to discuss it with you, and you are not to formulate or express any opinion as to the rights of the parties until this case has been finally submitted to you.

With that admonition we will now recess until 15 minutes after 3:00.

(Recess.) [2450]

The Court: Is it stipulated the jury are in the jury box?

Mr. Corinblit: Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Westbrook): Mr. Dunn, you called my attention to an error in computation here with regard to one of these averages which also affects the percentage, didn't you?

A. Yes. In the case of the Southside Theatre for the programs on which the Southside and Paradise played day and date, there is an error in averaging the gross admissions of the Paradise.

Instead of \$3677 which I gave you, it should be \$2927.

Q. \$2927? A. Right.

Q. And how does that affect the percentage?

A. Reduces it from 88 to 70.

Q. What is the significance of—strike that.

We were talking before we left—we have got one more to get up there I see. We were talking about the Academy and what you had done to obtain a comparison of the Academy and the Paradise.

(Testimony of Cecil L. Dunn.)

A. Yes. In the case of the Academy and the Paradise where there were no day and date exhibitions I took two groups of three pictures each which by the best standard I could apply to them were comparable pictures.

Q. What did you do to determine they were comparable? [2451]

A. Well, the best measure of comparability that was available to me was the national rental, national film rentals paid for the picture on all of its United States runs and the film rentals, total film rentals paid for the pictures in the Los Angeles Exchange territory runs.

I proceeded on the assumption that if two groups of pictures drew about as much in the national market and drew about as much in the Los Angeles Exchange territory market, that they were comparable pictures—that one had as good a drawing power—one group had as good drawing power as the other and as measured by the final measure of drawing power is what people will pay to see it.

Now, in the case of the three pictures which played at the Paradise, the national rental was \$5,414,000.

Q. That is the total on the group of three pictures?

A. That is the total on the group of three pictures, yes.

Q. What was the total on the group of the three pictures at the Academy?

A. \$5,236,000, a little bit less.



(Testimony of Cecil L. Dunn.)

Q. The national rentals on the three pictures at the Paradise was \$5,514,000? A. \$414,000.

Q. And at the Academy \$5,236,000?

A. Right. [2452]

Q. Now, you also mentioned the Los Angeles Exchange territory performance.

A. Right. The three pictures that played at the Paradise had Los Angeles Exchange territory rentals of \$325,000 and the three which played at the Academy had a Los Angeles Exchange territory rentals of \$305,000.

So, here are two groups of three pictures which in my judgment as measured by this pretty good measure of their drawing power, were closely comparable.

Q. Did you take into consideration at all in determining these two groups of three pictures the dates that they played at the respective theatres?

A. Yes. I did do that. All of them played on 7 day availability except of the two theatres and all of them played within the period of which we are concerned here. And the seasonal distribution is about the same. One played at the Paradise in September of 1950, one played at the Academy in August of—or, two in September of 1950 at the Paradise and one at the Academy in August and two in November. One played at the Paradise in October of 1950. In other words, there is no seasonal difference which would, I think, distort the comparability.

(Testimony of Cecil L. Dunn.)

Q. Now, on that basis, what did you determine the average weekly gross to be at the Paradise?

A. The average weekly gross at the Paradise was \$2318. [2453]

Q. May I have that again? A. \$2318.

Q. And at the Academy? A. \$3957.

Q. And what is the percentage comparison?

A. The Paradise gross was 52 per cent of the —no, wait a minute. That is wrong. Excuse me. That calls for a little arithmetic here. Excuse me. I took the slide rule apart a while ago to use it to scale the map, and didn't put it back together. I am accustomed to seeing it that way because my child is forever taking it apart and doing the same thing.

Now, we are getting it. It is 59 per cent. [2454]

Q. Now, you stated that those three pictures played on a 7 day availability? A. Yes, sir.

Q. Three at the Paradise and three at the Academy, is that correct? A. That is correct.

Q. In making that comparison, did you give any special attention to second features?

A. Yes, I did.

Q. Will you state just generally what consideration you did give them?

A. Well, for one thing I undertook to identify the second features, to compare them from the standpoint of the rentals which were paid for them in each instance, and to discover to what extent the second feature which was being played might have had its value impaired by having been played

(Testimony of Cecil L. Dunn.)

elsewhere in the area at the same time or shortly before, and so on.

The three pictures, the three second features which played with the group of three pictures at the Paradise had flat weekly rentals as follows: \$200, \$200, and \$500, and the three which played at the Academy on these three programs which I mentioned had flat weekly rentals of \$144, which seems a little odd, \$170 and \$150.

So if there is any particular advantage, as [2455] measured by that standard, which is, I suppose, comparable to the other rental standards which I have applied here, then the advantage lay with the group of second features which played at the Paradise.

Q. Can you state the distributor of the second features at the Academy?

A. At the Academy there were two Monogram pictures and one Republic.

In the Paradise there was one Monogram, one Columbia and one Universal.

Q. In terms of the study you were making, Mr. Dunn, what is the significance of this comparison of average gross?

A. I think there is considerable significance in this tabulation which we have here. If we look at the 7 day runs and compare the grosses of the Paradise with the grosses of the other theatres, we find that the Paradise does substantially less well than the theatres with which it is competing.

(Testimony of Cecil L. Dunn.)

In the case, however, of the 21 day runs, the Paradise does better.

Now, this, I think, is directly related to the discussion which we have been having earlier about, first, the population of the Westchester area, which the Paradise can draw upon. You remember that we said that within the two mile circle around the Paradise there were approximately 40,000 persons at that time. [2456]

Secondarily, that when we were talking about 21 day runs, a two mile circle was just about where the bulk of the patronage would come from. That is what is happening here.

When the Paradise runs at 21 day program, it draws well upon its immediate audience in the Westchester section as such, and competitively stands up well.

On the other hand, when it gets up into higher availability runs, and particularly 7 day runs, and has to compete with the other theatres playing equivalent or the same bills, it doesn't do as well. It is obviously a neighborhood community theatre, not well situated to compete farther afield.

Q. In pursuing your study of the Inglewood-Westchester area, you mentioned that you gave consideration to the results achieved on the Paradise Theatre survey in November 1950, is that correct?

A. Yes, I did.

Q. In that connection you studied the actual questionnaires that were returned, is that right?

A. I did.

(Testimony of Cecil L. Dunn.)

Q. Do you have any opinion, Mr. Dunn, with regard to the reliability of that type of survey as compared with the type of patronage survey that you conducted?      A. Yes, I have.

Q. Will you state what that opinion is? [2457]

A. I think there were different kinds of work. In the patronage survey of the Academy Theatre, as I said this morning, we were asking people as a matter of fact, where did you come from to go to the theatre?

In the survey which was made for the Paradise Theatre, the questions were of a radically different character. Most of them were, I think, directed at the idea of selling the Paradise, rather than at the idea of getting information as such.

For example, they contained such things as Do you know about your hearing aids? And do you know about our crying room? Presumably for babies.

Do you know about the parking space and things like that. They weren't questions of a factual nature.

Then, further, instead of, with very few exceptions, they were questions of What would you do character rather than What have you done? There were, of course, What have you done questions in there. Have you attended the Paradise Theatre and so. What theatres do you attend? Things of that character.

But, generally speaking, it was more of what you might call an opinion survey, and more of a

(Testimony of Cecil L. Dunn.)

public relations job, than it was a specific undertaking to determine some facts.

Q. Mr. Schreiber testified, Mr. Dunn, that he [2458] instructed his interviewers going out to make that survey to introduce themselves by saying they were from the Paradise Theatre. Does that have any effect on the validity of such a survey?

A. That tends to produce answers which are in a measure biased. One of the interesting things about doing this kind of work is the extremely cooperative attitude which people take. It is surprising. You can go and ask people almost anything and they seem happy to answer you, and you always have to make allowance for bias in your favor. If you say, "Do you use Ivory Soap?"

"Oh, yes, we use Ivory Soap."

You always have to make allowance for that sort of thing.

I think in a case of this kind when they say, "We are making a survey for the Paradise Theatre," always there is a predisposition to help the boy along. He is working for the Paradise Theatre and "We will give him some nice friendly answers." That happens very frequently. As a matter of fact, if you are going to try to determine really precise results in a survey of this kind, you have to be extremely careful to avoid introducing the possibility of a bias of that character, and you have to make allowances for it in your results. A statistician normally does so. [2459]

Q. Now, in connection with that survey, you re-

(Testimony of Cecil L. Dunn.)

call, Mr. Dunn, that there was one question asked about the use of the automobile to attend the theatre. A. Yes.

Q. At page 1902 of the transcript it was stipulated that out of 579 responses, 489 said they drove to the theatre. You are apprised of that fact?

A. That is right.

Q. Now, what significance does that fact have in relationship to your judgment with respect to the existence of substantial competition between the Paradise and other theatres?

A. A high degree of fluidity on the part of the people who were interviewed in that questionnaire. If there was an attractive picture within reasonable driving distance, they would go to see it. I mean that substantially reinforces—well, it bears out the four-mile draw idea. Nobody is going to walk four miles, at least not in Southern California.

People will move very readily to go to an attractive picture which is being exhibited within quite a reasonable radius.

Q. Now, also at page 1902 it was stipulated that out of 726 answers, a total of 17 said that they used the Inglewood newspaper to go to the theatre. It [2460] has also been testified that the Paradise Theatre used the Inglewood paper for its advertising, for part of its advertising.

Did you take that fact into consideration?

A. Yes, I did.

Q. And will you state how it affects your opinion with regard to substantial competition?

(Testimony of Cecil L. Dunn.)

A. Well, my view there, of course, is that since only 17 people in Westchester, at least 17 of the respondents to the Paradise Theatre survey said that they read the Inglewood paper in looking for theatre information.

The proprietors of the Paradise in advertising it in the Inglewood paper must certainly have been looking for patronage in Inglewood.

The Inglewood paper doesn't circulate to any great extent in the Westchester area. There is a local newspaper in the Westchester area, a weekly. As a matter of fact, the Inglewood paper doesn't make any effort to achieve or maintain circulation in the Westchester area, so if they are advertising in it it must be with, I think, with a view to drawing patronage from Inglewood and the area east of Westchester where the Inglewood paper circulates.

Q. Now, you did observe in your study of the Paradise Theatre survey of the residents of Westchester the question "What theatre do you attend"?

A. Yes, I did. [2461]

Q. And you made, to the best of your ability, an analysis of the responses to that question?

A. I did.

Q. Now, in that connection, Mr. Dunn, to what extent do you believe that—to what extent is it your opinion that the answers given in response to the survey indicate any particular pattern with respect to patronage?

A. I don't think they indicate very much beyond



(Testimony of Cecil L. Dunn.)

indicating a considerable degree of what I have called fluidity,—mobility. Beyond indicating a very large proportion of the people in the area are willing to go outside of the area, some 44 per cent, I think the total is, were willing to go outside of the area in search of entertainment. I don't think it was a very meaningful survey.

Q. Excuse me just a minute, Mr. Dunn. Now, Mr. Dunn, I have placed before you Plaintiff's Exhibit 64 in evidence, which is the plaintiff's tabulation of the results of the theatre survey, and I have placed on the board here joint plaintiff and defendants' Exhibit T in evidence, which was an exhibit prepared in the course of the cross examination of Mr. Alex Schreiber, about this survey.

Now, you mentioned that in your opinion the results of the survey indicated a certain amount of fluidity on the part of the residents of Westchester or an inclination to go elsewhere. [2462]

A. Yes, that is right.

Q. You will note Exhibit 64 which you have in your hand shows a breakdown into four categories which are reflected roughly on the board.

You have had occasion to go over that breakdown and examine it? A. Yes, I have.

Q. Now, would you step to the board here and point out the factors present which indicate to you the conclusion that you have expressed?

A. In the first category here we have 307 responses out of 549 total.

(Testimony of Cecil L. Dunn.)

In other words, 307 people said that they went to Westchester theatres. 56 per cent give that as what I presume to be a first choice, which leaves 44 per cent which I referred to a few moments ago as people who were willing to go outside of the Westchester area or who characteristically went outside the Westchester area or who at least had a first choice outside the Westchester area.

It is pretty hard to decide just what some of these responses do mean, but I think that is a reasonable assumption. 56 per cent of the people characteristically attended Westchester theatres and 44 per cent went elsewhere—in the elsewhere category.

There are 104 people mentioned—who mentioned [2463] other theatres in the Inglewood and Westchester area. That is 19 per cent of the total. 39 people mentioned other theatres outside the Inglewood-Westchester area—7.1 per cent and 99 people said theatres wherever they were situated. It depended upon the picture. That is 17.9 per cent.

These are the \$2 people we were talking about this morning who are willing to go and pay for the pleasure of obtaining first run and so on who characteristically go outside.

Q. Now, Mr. Dunn, if you will turn to the third page of Plaintiff's tabulation of this survey, Exhibit 64, you will note a question relating to drive-ins. A. Yes.

Q. Now, will you state the result of that question as reflected in plaintiff's tabulation and state

(Testimony of Cecil L. Dunn.)

what significance it has with respect to your opinion as to the existence of substantial competition between the Paradise and other theatres?

A. 252 people—let me see, the total number of responses to this question was 637. 252 of them said that they attended drive-in theatres.

Q. And 83 did not indicate?

A. 83 did not say anything, so we will—we should really leave out the 83 since the question isn't answered, which would reduce the total number to some place around 550 total responses, and a little less than half of them [2464] said they attended drive-in theatres.

Obviously you go to a drive-in theatre in an automobile. Again, it is evidence of this fluidity, this willingness to get around, the willingness to go see the picture that you want to see.

Now, of course, in the case of drive-ins, it is easier to take the children which I suppose adds up to a part of the competition.

Q. There were two drive-ins in the Inglewood-Westchester area during this period of time, the Century located near Imperial.

A. That is right.

Q. And the Centinela located up in the open space to the north of Westchester.

A. That is right, and I would say 45 per cent of the respondents, leaving out the "No" answers attended drive-in theatres.

Q. Now, were there any other conclusions that

(Testimony of Cecil L. Dunn.)

you felt able to draw from the Paradise questionnaire in November of 1950?

A. Well, let me review some of my notes here.

Q. I think you stated—I might as well clear that up, I think you stated you had gone about as far as you thought you could go?

A. Yes, I think I have gone about as far as I think I can. [2465]

Q. Now, there has been a good deal of mention in this case, Mr. Dunn, of the picture *Born Yesterday* which played day and date at four theatres. I believe that is correct, is it not?

A. That is right, the Paradise, the Southside, La Tijera and the Imperial all at the same time.

Q. Now, did you examine the results achieved on this picture during the first week of its exhibition in the Inglewood-Westchester area?

A. Yes, sir, I did.

Q. And then also the results of another picture?

A. I did.

Q. Let us put *Born Yesterday* down this way, Mr. Dunn, and I will put a column here headed *Born Yesterday*. The four theatres again were the Paradise——

A. La Tijera, Imperial and Southside. The picture played from March 14th to the 20th of 1951.

Q. The play dates are—— [2466]

A. 14th to 20th, 1951.

Q. 3/14-20/51. Now, did you determine the national film rentals on that picture?

A. Yes, I did.

(Testimony of Cecil L. Dunn.)

Q. Will you state the amount?

A. \$3,973,000.

Q. That is the total returns to the distributor from domestic distribution?

A. That is correct.

Q. Did you also determine the Los Angeles exchange territory rental on that picture?

A. Yes, I did.

Q. And that amount?           A. \$326,000.

Q. Just so the jury is aware of the area encompassed within the Los Angeles exchange area, will you state it as you understand it?

A. Southern California, Arizona, and Clark County, Nevada, Las Vegas in other words.

Q. The Paradise first week's gross on that picture was what?           A. \$3,718.

Q. And the Southside's first week's gross?

A. \$4,684. [2467]

Q. Now, were you able to find a comparable picture at all that played just day and date at the Southside and Paradise?           A. Yes, I think so.

Q. When I say comparable, I mean comparable in terms of results produced.

A. Yes, and in reputation and so on. At least, it is another picture—well, it was a first-class picture. It didn't gross as well either nationally or in the Los Angeles exchange territory, but it was a good picture.

Q. And that was Sunset Boulevard to which you referred?           A. That is correct.

(Testimony of Cecil L. Dunn.)

Q. And that played day and date at the Paradise and Southside?

A. That's right, October 5 to 11, 1950.

Q. Did you determine the national film rentals on that picture? A. Yes.

Q. What were they?

A. \$2,096,000 about half as much as *Born Yesterday*.

Q. And the Los Angeles exchange territory film rental on that picture? A. \$158,000.

Q. A little less than half as much?

A. Right. [2468]

Q. Did you then determine the Paradise gross on the 7 day run of that picture?

A. Yes, I did.

Q. For the first week? A. Right.

Q. How much was it? A. \$3,849.

Q. And the Southside gross? A. \$4,688.

Q. With reference to that comparison, Mr. Dunn, will you state how that figures in your opinion as to the existence of substantial competition between the Paradise and other theatres in the area?

A. Yes. Here we have two pictures, both admittedly good pictures and both drawing well nationally in the United States, but one which is clearly substantially more able to gross large revenues than the other. In other words, *Born Yesterday* was terrific and drew nationally and in Los Angeles twice as much as *Sunset Boulevard*. Sun-

(Testimony of Cecil L. Dunn.)

set Boulevard, of course, was still a good picture and did well.

Born Yesterday played in the four theatres which are indicated there, the Paradise, La Tijera, the Imperial and the Southside.

Then we come to Sunset Boulevard, a picture which nationally did only half as well, but which [2469] played day and date only at the Paradise and the Southside, and the Paradise does just as well with it as it did with Born Yesterday. In other words, in the absence of competition from the Imperial and the La Tijera, they are able to do just as well with a weaker picture as they did with an absolutely top picture with the heavy competition of the other two adjacent theatres.

Q. When I said before were you able to find a comparable picture, Mr. Dunn, I really should have said could you find another picture that had played date and date at the Paradise and Southside with the same national rental and the same Los Angeles exchange territory rental.

A. That is what I meant to imply.

Q. And the answer to that is no.

A. The answer is no. The term comparable is a term which I am using for this comparison.

Q. I would like to consider with you for a moment the question of the effect of a small or relatively small reduction in gross upon the profits of a theatre. For that purpose I would like to take the Academy Theatre which figured in some computations by plaintiff's counsel last week.

(Testimony of Cecil L. Dunn.)

The Court: Are you opening up a new subject? How long is this going to take?

Mr. Westbrook: Well, I doubt that we can finish it, although I am certainly prepared to go ahead.

The Court: I wish you would put down that [2470] sheet again. I want to ask the witness some questions.

Mr. Westbrook: Very well, sir. Excuse me.

The Court: Based on your statement a little while ago about the fact that the Paradise could do just as well with a poor picture as they could with a superior picture when compared to the Southside Theatre, would you consider that the Southside Theatre and the Paradise Theatre were in substantial competition?

The Witness: Now, let's put another phrase back in the statement I made.

The Court: All right. If I haven't quoted you correctly, you go ahead.

The Witness: I said that the Paradise in the absence of competition from the other two theatres, specifically, the La Tijera and the Imperial, did as well with a weaker picture as it could with the top picture in the presence of that competition.

The Court: Those figures you put on the board there, the comparisons, do they indicate to you in any way that there was or was not competition between the Paradise and the Southside?

The Witness: Going back to my—for a moment to my geographic standard here, competition on



(Testimony of Cecil L. Dunn.)

day and date runs on relatively high availabilities, and remembering the four mile circle, I would say yes, there is competition between the Paradise and the Southside. [2471]

The Court: What is the mileage between the Paradise and Southside?

The Witness: 6.6, as going up the streets, not flying through the air.

The Court: And 6.6, you still think there is competition between the two theatres?

The Witness: Yes, I do. Will you look——

Mr. Corinblit: Would you add the word substantial to that, your Honor?

The Court: So you consider it substantial competition?

The Witness: Yes, I would.

(Witness going to blackboard.)

There are four miles out here. Here you are. Here is the four mile circle with the radius around the Paradise. Then we come over here, and here is our four mile circle around the Southside, and here is this nice big football-shaped area right in the middle. On day and date runs they are in competition. I mean anybody who lives some place in here can make up his mind which way he wants to go, depending upon all the other things that tend to make him go one way or another.

I really think they are, sir.

(Witness resuming stand.) [2472]

The Court: The reason I asked you the question

(Testimony of Cecil L. Dunn.)

is because I took it from your answer that even though—I took it from your answer that the Paradise would do just as well with a poor picture as with a good picture as far as the two theatres were concerned?

The Witness: No, no. I think your Honor mistakes my intent here. What I am trying to do with this exhibit——

The Court: I am just like the jury. All I know is what you say. I got the impression from what you said that it would do just as well. The jury may have gotten an entirely different impression.

The Witness: The impression which I would like to have the jury get is that this shows the effect of competition between the Paradise and the La Tijera and the Imperial specifically, because when they had a top picture, an absolutely top picture *Born Yesterday*, it was playing day and date with all of these theatres.

This was what they could do in competition with the other theatres.

Apparently they did pretty well. Then they take another picture which nationally doesn't rate as high, which in the Los Angeles exchange territory doesn't rate as high, but they show it only in competition with the Southside.

They are free in this instance from competition with the Imperial and the La Tijera and they do just as well on their [2473] own gross with a picture which is half as good. In other words, when the competition of those two theatres was not there,

(Testimony of Cecil L. Dunn.)

they practically doubled their capacity to make a revenue out of the picture.

This exhibit, sir, runs to competition between these theatres. Not so pointedly to competition between the Paradise and the Southside.

But to return to your question. Is there any competition between the Paradise and the Southside.

The answer is yes.

On a 7 day availability run where the four-mile circle contains the bulk of the patronage, that competition is severe on successive runs, where the normal drawing circle gets smaller and smaller it isn't quite so tough, but it is still substantial competition, yes.

Mr. Westbrook: Your Honor, if I may before we recess, I would like to offer in evidence the map of the Academy Theatre patronage survey as Defendants' Exhibit Y-2, Joint Plaintiff and Defendants' Exhibit Y-2, and the gross admissions comparison as Joint Plaintiff and Defendants' Exhibit Y-3, and the Born Yesterday-Sunset Boulevard comparison as Joint Plaintiff and Defendants' Exhibit Y-4.

Mr. Corinblit: Your Honor, we will object to particularly the last one, the comparison Mr. Westbrook just turned down, unless we have a foundation laid and the actual figures of the [2474] individual theatres offered in evidence as well—that is, at the same time we should have the figures.

The Court: The objection is overruled. On cross

(Testimony of Cecil L. Dunn.)

examination you can use any figures you want to and cross examine this witness. You can show the witness is wrong if you can. That is your prerogative.

Mr. Corinblit: What I am talking about is the figures upon which this witness based his statistics. That is what I am directing your attention to.

The Court: Objection overruled. It may be admitted in evidence.

(The exhibits referred to were marked Joint Plaintiff and Defendants' Exhibits Y-2, Y-3 and Y-4, and received in evidence.) [2475]

\* \* \* \* \*

Q. (By Mr. Westbrook): Mr. Dunn, I call your attention to the—Mr. Corinblit called our attention yesterday in the course of our comparison of our day and date exhibition to a difference in play dates of the program *Petty Girl and Convicted* at the Fifth Avenue and Paradise, indicating that the program had played one day longer at the Fifth Avenue than the Paradise. [2479]

Have you since checked the gross on that final day at the Fifth Avenue? A. Yes, I have.

Q. And will you state what the gross for an exactly comparable period of time is at the Fifth Avenue?

A. It now becomes \$2144 instead of the \$2318 which—

Q. \$2144?

A. Yes, instead of \$2318 which we used yesterday.

(Testimony of Cecil L. Dunn.)

Q. How did that affect the percentage here?

A. The percentage which we used yesterday was 57 per cent and should now be 61 per cent.

Mr. Corinblit: I don't want to interrupt, but will you tell me now the dates?

Mr. Westbrook: I will give you a corrected work sheet for September 29 to October 4 for both theatres. In other words, a total of five days for each theatre.

Q. Now, he also called our attention yesterday, when we were presenting this matter, to the fact that the picture Break Through, which was the second Fifth Avenue and Paradise day and date exhibition, had played for two days longer at the Fifth Avenue than at the Paradise. How you also now adjusted the gross for the Fifth Avenue to eliminate the last two days of exhibition?

A. Yes, I have.

Q. And what is the revised figure? [2480]

A. That revised figure should be \$2287 instead of \$2780 which we used.

Q. And how did that affect the percentage on that comparison?

A. The percentage which we used yesterday was 68 per cent, but should now be increased to 83 per cent.

Q. Now, Mr. Corinblit called our attention also yesterday to a difference in play dates on the picture Sunset Boulevard at the Paradise and the Fox theatres, which was one of the five included in this group here. A. Yes.

(Testimony of Cecil L. Dunn.)

Q. Have you now had occasion to recheck the play dates on those pictures? A. Yes, I have.

Q. Will you state the results of your check?

A. There was a transposition in my record here. The play date at the Paradise was from October 12th to 17th of 1950.

Q. 12th to 18th, was it not?

A. Yes, 12th to 18th, 1950, and at the Fox, October 12th to 17th.

Q. So in that instance the picture played one day less at the Fox than the Paradise?

A. Right.

Q. And because of that fact, because it tended [2481] to favor the Paradise in that comparison you made no adjustment in that comparison?

A. That is correct. [2482]

Mr. Westbrook: Calling your attention to the comparisons between the Paradise and the Southside, I find some confusion has developed on the grosses, counsel, on Tea For Two. Your Exhibit 45-J, which is the play-off of the Paradise Theatre, does not give a one-week gross. It gives it for two different periods of time which do not total one week.

I would now like to ask for a stipulation, if I may, based upon the box office reports which you produced for me this morning, that the program headed by Tea For Two at the Paradise Theatre grossed a total of \$1,658.99, or roughly \$1,659 in the one week's playing time.

Mr. Corinblit: To move this along, let's stipu-

(Testimony of Cecil L. Dunn.)

late with you that that is a fact, subject to correction.

Mr. Westbrook: That is September 20 to 26, 1950.

Mr. Corinblit: We will take that stipulation subject to correction.

Mr. Westbrook: All right.

Q. Now, does that correction in Plaintiff's Exhibit 45-J, Mr. Dunn, affect the comparison which you have made here, I believe we took the gross from another record which proved to be less unreliable, but would you state the effect of that correction?

A. The gross I used for the Paradise was \$2,015. If we use instead the \$1,659, the average which we are employing here in this comparison between the Paradise and Southside [2483] should be corrected to \$2,927, instead of \$3,677, which we had before. We had 3,677.

Q. I think we made that correction yesterday. Isn't there a further correction, Mr. Dunn, a further change?

A. Let me look. Excuse me if I do a little rapid arithmetic here. I hope it proves to be rapid arithmetic.

Q. Mr. Dunn, if it is going to take any length of time, perhaps we can pass that and come back to it during recess.

A. If you will, please.

Q. And then put it on the exhibit by stipulation of Mr. Corinblit.

A. Thank you.

(Testimony of Cecil L. Dunn.)

Q. Referring to the three comparable pictures in the Academy Theatre and the Paradise, which are reflected in the last entry here, there is also an adjustment in that comparison by reason of the same error in Plaintiff's Exhibit 45-J, is that not correct?      A. That is correct.

Q. In that instance you had used the \$1,585 gross shown on Plaintiff's Exhibit 45-J, rather than \$1,659 gross we have now stipulated to, is that right?      A. That's right.

Q. Substituting 1659 gross for Tea For Two as one of the three comparable pictures, how does that affect the average Paradise gross on the three comparable pictures? [2484]

A. We had indicated it to be \$2,318, and this makes it \$2,343.

Q. How does that affect your percentage?

A. That is a negligible change in percentage.

Q. Taking into consideration all of these adjustments, these three or four adjustments that have been called to your attention, partly as a result of Mr. Corinblit's comments yesterday, do they affect in any way the opinion you expressed about the significance of this exhibit, which is now marked Joint Distributor Defendants' Exhibit Y-3 with regard to your opinion as to the existence of substantial competition?

A. No, it does. The conclusion is the same.

Q. Mr. Dunn, you mentioned yesterday the four mile radius as being the drawing area of a 7 day theatre, or a theatre in this area showing pictures



(Testimony of Cecil L. Dunn.)

on a 7 day availability. A. That's right.

Q. And in response to Judge Westover's comment or question, you indicated that it was your opinion that substantial competition existed between the Paradise and the Southside Theatre. I think it might be helpful if, preparatory to discussing that point a little bit further, you would come down and outline with this red crayon here a four-mile radius from the Paradise and Southside respectively.

(Witness leaving stand and going to blackboard.) [2485]

The Witness: That is the area I was talking about.

Q. (By Mr. Westbrook): Will you point out to the court and jury the area to which you had reference?

A. This is the four-mile radius from the Paradise and this is the four-mile radius from the Southside and this is the thing which I referred to as the football shaped area yesterday, which is a pretty fair fraction of the four-mile circle around both of the theatres, and obviously a larger fraction of the four-mile circle around the Paradise because it still has the ocean out here and population-wise a much more significant fraction on account of an uninhabited, shall we say, territory—the airport, the Baldwin Hills, the marsh out here in Playa Del Rey.

Q. Would you comment briefly on the character of the area that lies in that football shaped portion

(Testimony of Cecil L. Dunn.)

which you placed on the Distributors Defendants' Exhibit Y-2 in evidence?

A. It contains first—also some uninhabited territory—the Inglewood Park Cemetery and the Potrero Country Club and the race track right here, but otherwise it contains a very substantial portion of the center of Inglewood proper and the bulk of the residential area in the communities to the south of Inglewood, Hawthorne, Lennox and so on.

And also as indicated here by this population information which we developed with respect to the Academy, a rather densely [2486] populated area over in here.

Q. You say "over in here." You are referring to the area east of Lennox and Hawthorne, is that correct?

A. Well, generally to the east of this football shaped segment. It is good territory from the standpoint of potential patronage, saving only those sections which I referred to which don't contain any patrons.

Q. Now, in describing that four-mile radius, you have used the scale shown on the map, is that correct?     A. Yes, I have.

Q. I mean by using a string, of course, it may be a quarter of a mile one way or the other—it may vary as much as a quarter of a mile in either direction?     A. That is right.

Q. Now, did you make any study, Mr. Dunn, of the operating records and the distributors' rec-

(Testimony of Cecil L. Dunn.)

ords of theatres in the Inglewood-Westchester area to attempt to verify or check your opinion that the Paradise Theatre and the Southside Theatre were, in 1950 and 1951, in substantial competition for patronage?

A. Yes, I did. In the absence of any direct day and date comparisons between the Paradise and the Southside——

Q. You say there was an absence of any direct comparisons. What do you mean, Mr. Dunn? Were you able to find any instance where either the Paradise or Southside had played [2487] on an exclusive run in the area? A. No.

Q. So that all you had were instances where the Paradise and Southside had played day and date, is that correct?

A. That is correct, yes.

Q. Lacking any instance where the Paradise had played on exclusive run, what did you do?

A. I turned to a comparison between exclusive runs at the La Tijera Theatre and have compared those with a group of pictures of comparable quality, as measured by the standard which I employed yesterday. The pictures played day and date at the La Tijera and at the Southside.

Q. On what premise did you adopt that comparison as a means of evaluating competition between the Paradise and Southside?

A. The La Tijera Theatre is in the same general area as the Paradise. It is somewhat northeasterly of it in the Inglewood-Westchester area. It is situ-

(Testimony of Cecil L. Dunn.)

ated on the same principal thoroughfare there. It is a little closer to the Southside.

Q. Will you state the mileage from the Paradise to the Southside Theatre, and from the Southside Theatre to the La Tijera?

A. From the Paradise it is 6.6 and from the La Tijera it is 6 and a quarter and it seemed in general to me that in [2488] the absence of information on exclusive runs at the Paradise, a comparison between the Paradise and the La Tijera would say the same things about competition between the Southside and a theatre situated in the Westchester area as a comparison between the Southside and the Paradise itself. [2489]

Q. In other words, in evaluating this problem of substantial competition in the area, you considered the competitive situation of the La Tijera and the Paradise to be generally comparable as compared to the Southside Theatre?

A. That is correct.

Q. I think it may be helpful if in this instance we put on the board the specific pictures that were involved in your comparison. I think you mentioned that in each instance, that is, in the instance of exclusive runs, you used a group of three pictures, and in the instance of day and date runs, you used a group of three pictures?

A. That's right.

Q. Were those all on the 7 day availability, at least so far as the top half of the double bill is concerned?

A. That is correct.

(Testimony of Cecil L. Dunn.)

Q. I am going to put on the top of this piece of paper La Tijera Theatre, day and date with Southside.

Now, will you take us down through the pictures that you used in getting a group of three pictures for the day and date examples?

A. For the day and date examples, I used the Paramount picture Fancy Pants.

Q. Will you go slowly enough so I can follow you here?      A. Yes.

Q. I am marking this down on the paper on the board. That was Paramount? [2490]

A. That was a Paramount picture, yes.

Q. And the play dates on that?

A. From October 25 through 31 of 1950.

Q. Now, you mentioned you used the same standards as you had indicated yesterday in making the comparison of the Paradise and Academy.

A. That's right.

Q. That is to say, national rental realized on the picture and the Los Angeles exchange territory rental.

A. That's right. The national rental on that picture was \$2,481,000.

Q. I am going to drop the last three digits here to give myself space on this paper. That won't affect the results, will it?

A. No. Call it thousands of dollars. The Los Angeles exchange territory was \$129,000.

Q. I will put down 129 there.      A. Right.

Q. What was the gross realized on it?

(Testimony of Cecil L. Dunn.)

A. 2,859.

Q. That was on a one week exhibition?

A. Right.

Q. What was the second picture that you used?

A. The second picture was a Warner Bros. picture, *Only The Valiant*. That played from May 2 through 9, 1951. [2491] The national rentals were \$1,697,000.

The Los Angeles exchange territory rental was \$88,000, and the *Paradise* gross was \$2,137.

Mr. Corinblit: *Paradise* gross, Mr. Dunn?

The Witness: \$2,137.

Q. (By Mr. Westbrook): *La Tijera* gross, you mean? A. Oh, I beg your pardon.

Q. Again, still on the day and date exhibition—

A. The third picture was *Along The Great Divide*, also a Warner Bros. picture. That played from June 13 through 19, 1951.

The national rentals were 1,214,000.

The Los Angeles exchange area territory rentals were 73,000, and the *La Tijera* gross was 1,303.

Q. Do you have the totals on those three grosses?

A. The national total for the three pictures, \$5,332,000, and the Los Angeles exchange territory, 290,000.

Q. And the total on the gross?

A. 6,299, for an average for the three pictures of 2,099.

Q. Let's call it 2100. It is easier to work with.

A. 2100, yes.

(Testimony of Cecil L. Dunn.)

Q. Let's run down the group of three that you used as exemplars of the exclusive run—first of all, did you have any difficulty finding exclusive runs for the La Tijera? [2492]

A. Yes, I did. There were not a great many of these.

Q. Will you now state the pictures that you used in that comparison? I believe the first is Duchess of Idaho, is that right?

A. That's right, Duchess of Idaho, which played from August 22 through 29, 1950. The national—

Q. Isn't that 23 through 29, Mr. Dunn?

A. 23 through 29. Excuse me. Yes.

Q. That was an MGM picture?

A. That's right.

Q. Before we get down to the results, let's just put down the national and local rentals, and then we can develop them one by one as to the grosses thereafter.

A. National gross was \$2,360,000.

Q. Is that 2,685,000?

A. Oh, I beg your pardon. I have written so much on this paper. 2,658,000.

Q. The Los Angeles exchange territory rental?

A. 118,000.

Q. Before we leave that picture, was there another Metro picture at approximately the same time that also played exclusive first run?

A. Yes, there was.

Q. That was Summer Stock?

A. Summer Stock, right. [2493]

Q. That had approximately the same national

(Testimony of Cecil L. Dunn.)

and Los Angeles exchange territory rentals, is that right?

A. Just about. It was a little lower on the national rentals and a little higher on the Los Angeles exchange territory.

Q. Did it gross more or less at the La Tijera than Duchess of Idaho?

A. At the La Tijera, it grossed approximately \$600 more than the Duchess of Idaho. [2494]

Q. And why then did you select the Duchess of Idaho for this comparison?

A. It seemed to me by and large that the Duchess of Idaho offered the most favorable and generally stable comparison which was possible here.

Q. If you used Summer Stock instead of Duchess of Idaho would it tend to enlarge or decrease the weight attached to the exclusive run in this comparison? It would serve to enlarge it, would it not?

A. It would by the difference, of course, between the grosses on the two pictures.

Q. So that the selection of Duchess of Idaho represents the more conservative choice?

A. Precisely, yes.

Q. Now, take the next picture that you put in this group.

A. The next picture was one—was also an MGM picture Watch The Birdie. It played from February 10th through 16th of 1951. The national rentals were—

Q. That was February 10th<sup>4</sup> to 16th?



(Testimony of Cecil L. Dunn.)

A. Right. \$1,200,000.

Q. And the Los Angeles exchange territory?

A. Los Angeles exchange territory rental was \$65,000 and the La Tijera, \$2139.

Q. What was the next picture? [2495]

A. The third picture was a Paramount picture Passage West. It played July 25 to 31st, 1951.

Q. What was the national rental on that picture? A. \$1,059,000.

Q. What was the Los Angeles exchange territory rental? A. \$52,000.

Q. Now, do you have the totals on those two columns of figures?

A. Yes. The total national rental was \$4,944,000. The Los Angeles exchange territory rentals were \$248,000.

Q. All right. Now, just a minute. In other words, in making this comparison the national rentals on the group of three pictures playing day and date were slightly larger than the national rentals on the three pictures playing on the exclusive run?

A. That is right. Just about \$400,000 more.

Q. And similarly the Los Angeles exchange territory rental on the group of three pictures that you are making comparison on were slightly more—that is, the group of three day and date pictures was slightly more than the Los Angeles exchange territory rentals on the three pictures on the exclusive run? A. That is right.

Q. Now, let us go down and record the grosses

(Testimony of Cecil L. Dunn.)

actually achieved by the La Tijera on these three pictures. [2496]

A. The Duchess of Idaho was \$3,309.

On Watch The Birdie as indicated a moment ago, \$2139 and on Passage West, \$2291.

Q. And now what is the total of those?

A. \$7739.

Q. And the average of the three pictures?

A. \$2580.

Q. So that it is then correct to state that the group of three pictures playing on exclusive run grossed on the average \$480 more than the group of three pictures playing on the day and date run, is that right? A. That is correct.

Q. Now, have you calculated the percentage that that \$480 is of the average of \$2580 on the exclusive run?

A. Yes, but let me check again. It is 18.6 per cent.

Q. Now, will you explain, Mr. Dunn, the significance of this comparison in terms of your opinion that substantial competition existed between the Paradise and the Southside Theatres?

A. We have here a situation in which the La Tijera is playing to comparable groups of pictures.

When they played the group on exclusive run their revenues averaged 18.6 per cent more than when they played day and date with the Southside. In other words, when they were in [2497] competition with the Southside, a bite of approximately 18.6 per cent was taken out of their total revenue. And

(Testimony of Cecil L. Dunn.)

18.6 per cent certainly falls well within any of the various definitions of substantial competition which I have used.

Now, if this happens to the La Tijera, I am of the opinion that a similar situation would develop as between the Southside and the Paradise playing in similar circumstances. Or, in other words, to carry it to the conclusion which Mr. Westbrook's question calls for, there would be in these instances substantial competition between the Paradise and the Southside Theatres.

Q. Now, Mr. Dunn, there has been some testimony in this case about when the Academy and the Southside played day and date.

Now, I take it it would be your opinion that based on what you have already said, the Academy and Southside are actually in substantial competition?

A. Yes, certainly.

Q. Would you state whether you regard the competition that the Academy Theatre would receive from the Southside Theatre playing day and date, to be more or less severe than the competition it would receive from the Paradise Theatre playing day and date?

Mr. Corinblit: I object to that for the reason no foundation has been laid as to the "severity of competition." [2498]

The Court: Overruled.

The Witness: Yes. I think that the competition which the Academy would receive from the Paradise would be substantially greater than the compe-

(Testimony of Cecil L. Dunn.)

tition which it receives from the Southside in comparable circumstances, because as I have pointed out the only place that the Paradise can go for the additional patronage, which it would have to draw in order to obtain the audiences which 7 day availability would call for, is to the east. The people aren't immediately around it in the Westchester community as such. They aren't out in the ocean. They are not on the International Airport. They are out there in the base of that big triangle at the center of which is where the Academy is located. It would be much more severe between the Paradise and the Academy than the Southside and the Academy under comparable circumstances. [2499]

Q. (By Mr. Westbrook): Did the traffic pattern as it existed in 1950 and 1951 in that area have anything to do with your opinion in that respect?

A. Yes, certainly, because the main flow in an easterly and westerly direction, as I have indicated, is along Manchester Boulevard, which is immediately adjacent to the Academy, and very closely adjacent and well connected to the location of the Paradise, whereas the Southside, trafficwise, is somewhat more remote, out Vermont and down around the corner and down to Imperial. Manchester is the heavily traveled artery in that area.

Q. Therefore, more flow of people between the Academy and the Paradise than between the Academy and Southside, is that right?

A. That is correct.